

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, and)
DARLENE BLAKESLEE,)

Defendants.)
_____)

Case No: CV08-21-00103

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Defendants' Motion for Summary Judgment on the issue of Equitable Fraud is granted, and that claim is DISMISSED. IT IS FURTHER DECLARED THAT:
2. The Terrace Lakes Water Company Board of Directors properly conducted an annual meeting and vote on whether or not to amend the Bylaws to include North Ridge lot owners as eligible Subscribers. That Motion failed to pass. Therefore, the Articles and Bylaws were not amended to include North Ridge as eligible Subscribers entitled to vote.
3. Each eligible lot in Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One is allowed only one vote.

4. The person receiving the highest number of votes cast at an election for a Director seat during a properly held meeting shall be declared the holder of the seat for the specified term.
5. In order to remove a sitting Director prior to the expiration of the Director's term, requires a total of fifty percent of all subscribers eligible to vote, plus one.
6. Future annual or special meetings can only be held in person or represented by proxy until such time as the Terrace Lakes Water Company Bylaws are amended to provide for mail in voting without proxy.
7. The Terrace Lakes Water Company Board of Directors shall hold the 2023 Annual Meeting pursuant to § 2.4 of the Bylaws on such date, and at such time, as designated by the Board of Directors.
8. The Terrace Lakes Water Company Board of Director seats are: Dennis Largent (Seat A), Mary Cordova (Seat B), Chuck Steele (Seat C), Julie Stillman (Seat D), and Rolly Woosley (Seat E).
9. As a result of the Terrace Lakes Water Company's election at the Annual Meeting held in 2020, Dennis Largent (seat A) and Mary Cordova (seat B) were elected for a three year term to expire in 2023; Chuck Steele (seat C) and Julie Stillman (seat D) were elected to finish the previous term from 2019, where the previous election was not held, and therefore their terms were to expire in 2022; and Rolly Woolsey (seat E) was appointed to finish the previous 2018 term when that previous election was not held –which would cause his term to expire in 2021.
10. The terms of each seat were extended by one year pursuant to the Court's March 29, 2022 Order. Therefore, the terms for seats A and B expire in 2024; the terms for seats C

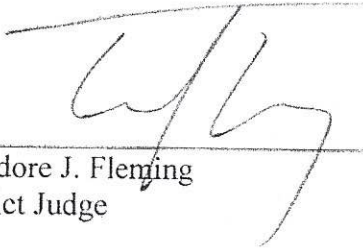
and D expire in 2023; and the term for seat E expired in 2022. An election for seats C, D, and E should be held in 2023, and an election for seats A and B should be held in 2024.

11. A Special Master is appointed to report to the Court his findings concerning the transference of all company books and records, and determine whether any were destroyed or altered within sixty (60) days. The Special Master shall also witness the annual meeting, special meetings, and elections that may occur during 2023 and 2024, as well as any amendments to the Bylaws or Articles that may occur during such time period, to include collecting and counting the ballots and proxies to ensure that both the Bylaws and the Court's Orders and Declarations are complied with. The Special Master shall file a report of the results of any such meetings, elections, or occurrences with the Court. The report shall be a general report regarding the outcomes, and need not include a list of the names and addresses of those in attendance, or how any particular subscriber voted, etc..., in the interest of individual Subscriber privacy. The Defendants shall be solely responsible for the costs of the Special Master.

12. The Defendants are permanently enjoined from attempting to hold special meetings that are not in compliance with the Terrace Lakes Water Company's Articles of Incorporation, Bylaws, or Idaho law.

IT IS SO ORDERED.

DATED this 12 day of May 2023.



Theodore J. Fleming
District Judge

CLERKS CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent to the following via email:

Michael Kane
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Dated May 12, 2023.

MARY PRISCO
Clerk of the District Court

By: Angel O'Brien
Deputy Clerk

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, and
DARLENE BLAKESLEE,

Defendants.

Case No: CV08-21-00103

**MEMORANDUM DECISION ON
ORDER FOR ENTRY OF
DECLARATORY JUDGMENT**

THIS MATTER comes before the Court on Plaintiffs' Motion for Entry of Declaratory Judgment, Permanent Injunction, and Request for Judicial Notice, filed on February 24, 2023, and on Defendants' Objection and Renewed Motion to Mandate the Election of Directors and for Other Relief, filed on March 6, 2023. After supplemental filings were submitted by both parties, a hearing was held on April 7, 2023, and the matter was taken under advisement.

For the reasons set forth herein, Plaintiffs' Motion is GRANTED in part and DENIED in part, and Defendants' Motion is GRANTED in part, and DENIED in part.¹

¹ The Court takes judicial notice of the following in Boise County Case No. CV08-21-0103: Affidavit of Dennis Largent in Support of Plaintiff's Pleadings, filed May 10, 2021; Court Reporter's Transcript of Proceedings held June 18, 2021; Findings of Fact and Conclusions of Law Following Evidentiary Hearing, filed March 29, 2022; Plaintiffs' Notice of Compliance, filed November 2, 2022; and Order of Defendants' Motion for Summary Judgment

PROCEDURAL AND FACTUAL BACKGROUND

The procedural and factual background of this case is fully set forth in the Court's Findings of Fact & Conclusions of Law Following Evidentiary Hearing filed on March 29, 2022, the Court's Order on Motion for Disqualification filed on October 10, 2022, the Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss filed March 3, 2021, and the Order on Defendants' Motion for Summary Judgment filed on February 10, 2023.

This case followed closely after the resolution of a lawsuit between the same parties in Boise County Case CV08-20-0247. This action again involves activities surrounding meetings and the election of the Company's Board of Directors. In the previous litigation, the Court ultimately held that the Plaintiffs comprised the legitimate Board of Directors and entered a preliminary injunction. In the instant litigation, the parties stipulated to preliminary injunctive relief where the Defendants agreed that they 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.

Prior to the evidentiary hearing, the Plaintiffs further refined the issues and their requested relief in their supplemental trial brief to seek declaratory and injunctive 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

filed February 1, 2023. The Court also takes judicial notice of filings made that are specifically referenced and set forth in this decision.

The Court take judicial notice of the following from CV08-20-0247: Judgement filed July 22, 2021; Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss, filed March 2, 2021. The Court also takes judicial notice of filings made that are specifically referenced and set forth in this decision.

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.

The evidentiary hearing resulted in a substantial three-day trial held on October 1, 2021, October 28, 2021, and January 28, 2022, where the Defendants were directed to present any evidence that they thought was necessary to rebut the Plaintiffs' presentation of evidence. Following the evidentiary hearing, the Court took the matter under advisement and later entered certain written declaratory findings, although no separate judgment was entered. The Court determined that a preliminary injunction was warranted pending a jury trial on the merits on the issue of equitable fraud.

On the jury trial issue, the Court ultimately, "on balance and to err on the side of caution," concluded that the Defendants may have a jury trial on the equitable fraud issue.² In this regard, the Court was clear in its findings that the only claim to be decided by a jury was whether Plaintiffs are entitled to declaratory relief that equitable fraud was committed by the Defendants upon the individual Plaintiffs and the Company, with the remainder of the issues to be decided by the Court.

As to the remainder of the issues, the Court determined the following:

² The Court later granted the Defendants' Motion for Summary Judgment finding that Equitable Fraud was not an available cause of action in Idaho on the facts presented in this case by Plaintiffs.

1. The Defendants were enjoined from calling for a Special Meeting and attempting to remove the current Board, until after the jury trial on the equitable fraud issue;
2. Northridge lot owners were not Subscribers, because the Defendants failed to properly amend the Bylaws
3. Voting, Elections, and Meeting Matters:
 - a. Eligible Voters: The current Board is to determine the number of eligible voters (1) after a Special Master confirms that all Company books and records have been transferred and (2) after a vote is held on whether to amend the Bylaws to include North Ridge lot owners.
 - b. Board of Director Seats: Pursuant to Idaho Code § 30-30-106, the Court declared that the Plaintiffs' board seats shall be extended for one year.
 - c. Mandating an Annual Meeting: The Court declined to grant the Defendants' request that the Court "mandate" the Plaintiffs to hold an annual meeting "at this time," and left it to the current Board's discretion to set an annual meeting within a reasonable time. The Court declared that the current Board could choose to hold any election by mail or in person, and the only persons and entities entitled by law to vote were those owning lots within Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One, but not North Ridge.
 - d. Calling a Special Meeting: The Court enjoined the Defendants from calling a Special meeting until the current Board makes a final determination as to the amount of Subscribers and eligible voters, and that the Board should, with all reasonable haste, call a Special Meeting to vote on amending the Bylaws to add

North Ridge water users as Subscribers, clarify that there is one vote per lot, and provide for voting by mail without a proxy, if they are so inclined.

4. The Court appointed a Special Master to ensure that all Company books and records are transferred to the Plaintiffs.

The Plaintiffs now request the Court enter the following declarations and permanent injunctions pursuant to, *inter alia*, the March 2, 2021, Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss; the Affidavit of Dennis Largent filed May 10, 2021, Findings of Fact & Conclusions of Law Following Evidentiary Hearing filed March 29, 2022, and the Notice of Compliance filed November 2, 2022. Specifically, they seek the following relief:

1. North Ridge Lot owners are not Terrace Lakes Water Company Subscribers at this time;
2. Each eligible lot in Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One is allowed one vote;
3. Current Board of Director seats are as follows: Dennis Largent (A/3-year term), Mary Cordova (B/3-year term), Chuck Steele (C/2-year term), Julie Stillman (D/2-year term) and Rolly Woolsey (E/1-year term);
4. All board seats will be extended for a one-year term from March 29, 2022;
5. An annual meeting may be held in person or by mail without proxy;
6. The Special Master (paid by the Defendants) will report to the Court his findings concerning the transference of all company books and records and whether any were destroyed or altered, not later than sixty (60) days after Court determination of this motion;

7. Enjoin Defendants from attempting to hold special meetings not in compliance with the Articles of Incorporation, Bylaws or state law. Specifically to enjoin Defendants from issuing proxies, calling elections, issuing and counting ballots or otherwise attempting to usurp the functions of the Board of Directors;
8. Enjoin Defendants from interfering with the duties of the appointed Special Master;
9. The Plaintiffs also request that the Court declare that the number of votes required to remove a sitting director must be a fifty percent (50%) plus one (1) of the total number of eligible votes to elect a director;³ and
10. In order to remove a sitting director prior to the expiration of the director's term requires a total of fifty percent of all Subscribers eligible to vote and one.

The Defendants oppose the Plaintiffs' Motion for Entry of Declaratory and Permanent Injunctions, and most of the forms of relief sought. However, the Defendants are willing to stipulate, to the following:

1. Each eligible lot in Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One is allowed one vote;
2. The current Board of Director Seats are Dennis Largent in seat A, Mary Cordova in seat B; Chuck Steel in seat C; Julie Stillman in seat D; and Rolly Woolsey in seat E;
3. That the Bylaws require fifty percent (50%) plus one (1) as the threshold for removal of directors outside a routine election; and
4. That they are ready and willing to cooperate with the Special Master.

³ The Plaintiffs assert that there are three hundred and seventy-six (376) lots which comprise the potential eligible Terrace Lakes Water Company votes, so not less than one hundred eighty-nine votes must be cast in favor of removal of a single sitting director.

The Defendants are opposed to the extension of the board members' term lengths that the Plaintiffs have asked to be imposed; a declaration that the annual meetings may be held by mail; and are opposed to the injunctive relief requested.

In regards to the Defendants' pending motion, they have filed a renewed Motion to Mandate Election and for other relief, pursuant to the Court's authority under I.C. § 30-30-106. The Defendants request that the Court enter a ruling regarding the following:

1. Confirm that three of the five Board of Director seats have expired pursuant to § 3.5 of the Terrace Lakes Water Company bylaws;
2. Confirm that Dennis Largent is in seat A and Mary Cordova is in seat B, and that those seats expire at the September 2023 annual meeting of Subscribers of the Water Company;
3. Confirm that Chuck Steel is in seat C and Julie Stillman is in seat D, and that those seats expired effective September 2022;
4. Confirm that Rolly Woolsley is in seat E and that seat E expired in September 2021;
5. Order that a meeting of Subscribers of the Company shall be held as soon as possible on a date to be set by the Court, to correct the failure of the Board in holding an annual meeting in September 2021 and September 2022, for the election of seat C, seat D, and seat E of the Board;
6. Directing that the special meeting ordered by the Court be held to hold a vote on the addition of North Ridge Subdivision;
7. Directing that Subscribers get to cast one vote for each lot owned for each issue up for vote, one for seat C, which will expire September 2025, one for seat D which will expire

September 2025 and one for seat E which will expire September 2024, and one in favor or opposition to the addition of North Ridge.

8. Directing that the individual receiving the highest number of votes for each seat be considered the holder of the seat for the terms specified above;
9. Directing that North Ridge Subdivision shall be admitted to Terrace Lakes Water Company if the vote to that end has more votes in favor than opposed of the votes cast, so long as the number of participants meets the quorum requirements laid out in the bylaws;
10. Mandating the newly formed board immediately file with the Court an updated list of Subscribers of the Company who are eligible to vote for Directors in the September 2023 meeting, including their mailing address;
11. Directing that the meeting be held in person pursuant to the Company bylaws § 2.6;
12. Requiring that the Special Master witness both the annual meeting and the election for expired seats C, D, and E, and vote on the addition of North Ridge Subdivision, to oversee the election, including collecting and counting the ballots and proxies;
13. Mandating that an annual meeting of Subscribers for the election of seat A and seat B, currently held by Mr. Largent and Ms. Cordova, respectively, be held in September 2023, with the term of seats A and B set to expire in September 2026;
14. For such other relief or direction as is necessary, just, and proper.

LEGAL STANDARD

Injunctive relief binds only the parties being enjoined, compelling them to take or refrain from taking some action. *Hood v. Poorman*, 171 Idaho 176, 519 P.3d 769, 792 (2022). “The granting or refusal of an injunction is a matter resting largely in the trial court's discretion.” *Id.*;

Munden v. Bannock Cnty., 169 Idaho 818, 504 P.3d 354, 363 (2022) (citing *Conley v. Whittlesey*, 133 Idaho 265, 273, 985, P.2d 1127, 1135 (1999)). “The object of injunctive relief is to prevent injury, threatened and probable to result, unless interrupted.” *Gem State Roofing, Inc. v. United Components, Inc.*, 168 Idaho 820, 834, 488 P.3d 488, 502 (2021); *Miller v. Ririe Joint Sch. Dist. No. 252*, 132 Idaho 385, 388, 973 P.2d 156, 159 (1999) (citation omitted).

Where the conduct causing injury has been discontinued, the dispute is moot and the injunction should be denied. However, as the United States Supreme Court observed, the trial court must be convinced that “there is no reasonable expectation that the wrong will be repeated.

Id., quoting *O’Boskey v. First Fed. Sav. & Loan Ass’n of Boise*, 112 Idaho 1002, 1007, 739 P.2d 301, 306 (1987) (internal citations omitted). Further, “injunctive relief looks to the future, and is designed to deter rather than punish[.]” *Id.*

A permanent injunction, requires a showing of threatened or actual irreparable injury. *Gem State Roofing, Inc.*, 168 Idaho at 835, 488 P.3d 488, 502. Additionally, the trial court must be persuaded that there is “no reasonable expectation that the wrong will be repeated in order in order to deny a permanent injunction.” *Id.*, *O’Boskey*, 112 Idaho at 1007, 739 P.2d at 306.

“Before or after beginning a 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.” IRCP 65(a)(2).

ANALYSIS AND CONCLUSIONS

The outstanding jury trial and determination of whether the Plaintiffs were entitled to declaratory relief that the Defendants committed equitable fraud upon the Plaintiffs and

Company was resolved by the Court's Order Granting the Defendant's Motion for Summary Judgment. Therefore, and as previously indicated in the Court's prior Findings of Fact and Conclusions of Law Following Evidentiary Hearing, filed March 29, 2022, the remainder of the issues are to be decided by the Court.

A. The Board properly conducted a vote on whether or not to amend the Bylaws to include North Ridge lot owners and determine the number of eligible voters as ordered by the Court in its March 29, 2022 Findings.

The Court previously found and determined that pursuant to the Bylaws, the process to add North Ridge lot owners had not been followed, and that the Bylaws would need to be amended in accordance with the bylaw requirements for those lot owners to have any right to vote in Company matters pursuant to §§ 8.2 and 8.3 of the Company Bylaws. Although the Defendants seek an order from the Court directing that a special meeting be held on this issue, contending that the meeting and vote actually held was invalid because of the manner in which the vote and meeting was held, the Court disagrees and determines otherwise.

In the Court's March 29, 2022 Findings, the Court specifically directed that the Board hold a vote on amending the Bylaws to include North Ridge and determine the total amount of eligible voters. Pursuant to the Court's discretion and authority set forth in I.C. § 30-30-106, the Court explicitly ordered that the meeting and vote could be "in person or by mail" in order to determine whether to amend the bylaws to include North Ridge and determine the total amount of eligible voters. (March 29, 2022 Findings, p. 28).

The method of mail in voting to obtain the vote of the subscribers, although not specifically provided for in the Bylaws, was ordered by the Court and is well within the authority vested in the Court pursuant to I.C. § 30-30-106(3) to do so. The Court found such action

necessary given the situation of the Company as a result of the Defendants' previous failures to observe the bylaws and their persistent and improper attempts to regain control. The Court concluded that the orders and exercise of the Court's powers and involvement were necessary to get the Company "back on track and in compliance with its Bylaws," and accordingly dispensed with the requirements that would otherwise be imposed by the articles, bylaws, or statutes relating to the holding of, or voting at, meetings.

Pursuant to the Notice of Compliance filed by the Plaintiffs on November 2, 2022, the Plaintiffs complied with the provisions of the Court's March 29, 2022 Findings and Order. They determined the total number of eligible Subscribers to be 354. The Board held a vote by mail, which included the current eligible Subscribers, to determine whether to amend the Articles of Incorporation and Bylaws for Terrace Lakes Water Company to add North Ridge as potential eligible Subscribers. The total number of ballots returned was 165, which established a quorum per § 2.6 of the Bylaws. The final vote tally was "77 for including North Ridge," and "84 against including North Ridge." Consequently, the motion to include North Ridge failed to reach the necessary percentage to pass, and therefore failed.

By virtue of the Court's authority, the method of obtaining the vote of the members in this regard "is for all purposes" valid and "shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and [the] act." I.C. § 30-30-106(5). Accordingly, North Ridge lot owners are not Terrace Lakes Water Company Subscribers at this time. In order to amend either the Articles of Incorporation or the Bylaws to include them, §§ 2.6, 8.1, and 8.2 of the Bylaws applies as to the number and/or percentage required for approval

of such amendment –and the percentage required is 75% when a quorum to conduct business is met, which is at least ten percent (10%) of the Subscribers entitled to vote.⁴

B. Each eligible lot in Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One is allowed one vote.

The parties both stipulate and agree that each eligible lot in the Terrace Lakes Recreation Ranch Unit Nos. 1 through 13 or Timbers One is allowed only one vote, regardless of the number of owners of a particular lot. This agreement resolves the ambiguity of a potential conflict when more than one person or entity may own a single lot, and whether, in that instance, each and every owner of the particular lot would be entitled to a vote or only one vote.

Additionally, based upon the agreement of the parties, in order to remove a sitting Director prior to the expiration of the Director's term, a total of fifty percent of all subscribers eligible to vote, plus one, shall be required.

In regards to the number of votes required to elect a director, the Court determines that person receiving the highest number of votes cast for each seat shall be considered the holder of the seat for the specified term.

Accordingly, unless and until an amendment expanding the voting power of each eligible lot is revised, the judicial determination of "one lot, one vote" is entered. To remove a sitting Director prior to the expiration of the term, there must be a total of fifty percent plus one of all subscribers eligible to vote. In an election to fill a director seat, the person receiving the majority of the votes shall be declared the holder of that seat for the specified term.

⁴ Thus, the Defendants' request for an order directing that North Ridge Subdivision shall be admitted to Terrace Lakes Water Company if the vote to that end has more votes in favor than opposed of the votes cast, so long as the number of participants meets the quorum requirements laid out in the bylaws, is denied.

C. Until the Company Bylaws are amended, any future annual or special meetings can only be held in person or represented by proxy.

1. The Bylaws must be amended to provide for mail in voting without proxy.

Although the Court, in exercising its power and authority pursuant to I.C. § 30-30-106 to dispense with the requirements of the Bylaws to allow mail-in voting to determine whether or not to amend the Bylaws to include North Ridge lot owners, this directive was limited.⁵ The Court tailored its findings and conclusions in this regard to resolve the issue of North Ridge and the determination of the actual number of subscribers eligible to vote so that the Company could “manage its affairs without further resort” to the statute. I.C. 30-30-106(4).

The Court advised in its March 29, 2022 Findings that the Board should hold a Special Meeting to amend the Bylaws to provide for voting by mail without a proxy, “if they are so inclined.” Although the Court allowed the annual meeting to be held by mail without a proxy, it did so narrowly, so that the Company could manage its affairs and determine the issue of North Ridge and eligible subscribers.

Currently, all of the relevant provisions of the Bylaws plainly and consistently provide that the vote is comprised of the Subscribers present or represented by proxy.⁶ The current Bylaws contemplate voting to occur either in person or by proxy, which implicitly excludes mail in voting. Although the Bylaws do not *explicitly* prohibit mail in voting, the application of what is explicitly allowed (in person or proxy) necessarily excludes mail in voting as an option.

⁵ This is clear as the Court directed in its Findings that a vote needed to be held to amend the Bylaws to allow for mail in voting without proxy. March 29, 2022 Findings, p. 29.

⁶ See Bylaw Sections: § 1.13 Policies and Procedures; § 2.6 Quorum; § 3.93 Telephone Meetings; § 3.10 Voting (The affirmative vote of the majority of the Directors present shall be the act of the Board of Directors); § 7.1 Dissolution; § 8.1 Amendment of the Articles of Incorporation; § 8.2 Amendment of the Bylaws.

Otherwise, it would be inconsistent with all of the provisions allowing a Subscriber the option to vote by proxy, making proxies unnecessary.

As stated in the Court's Findings, *if* the Company is inclined to amend the Bylaws to provide for voting by mail without a proxy in order to allow actual, eligible Subscribers who want to vote by mail, then the Bylaws should be amended to reflect that as a viable option. (March 29, 2022 Findings, p. 29).

Accordingly, although the Court authorized the meeting and vote to be held by mail in regards to amend the Bylaws to include North Ridge lot owners and determine the number of eligible owners, the request for declaratory relief that future Special and Annual Meetings may be held by mail-in voting without a proxy is denied, and requires an amendment to the Bylaws. This is consistent with the Court's prior findings.

2. Time of the Meeting (Mandating an Annual or Special Meeting).

The Defendants have renewed their request for the Court to Order a Company meeting where elections could be held. They contend that there were no elections in 2021 or 2022. In the Court's March 29, 2022 Findings, the Court enjoined Defendants from calling for a Special Meeting and attempting to remove the current Board until after the jury trial on the equitable fraud issue. That issue was resolved by the Court's Order Granting Summary Judgment.

However, as the Court had previously found, the Defendants withheld Company documents from the current Board despite the prior stipulation and Court Order. The Court found after trial that the undisputed evidence showed that the Company books and records have been slowly handed over to Plaintiffs over the course of several months since the litigation began. (March 29, 2022 Findings, p. 20).

The Court also left it to the current Board's discretion to set an annual meeting within a reasonable time, rather than mandate that the Plaintiffs hold an annual meeting at a specific time. Given that when the Defendants were on the Board and failed to hold annual meetings for six or more years, their arguments that the Plaintiffs are trying to abuse the bylaws and that "they refused to follow [the Bylaws] to their advantage by extending out their terms to expire three years after they were supposed to expire" is not persuasive and completely ignores Defendants' past conduct in this regard. Their contention that the "lack of elections has been the fault of Plaintiffs' alone" is also unpersuasive and disregards Defendants' continued course of conduct in relation to the transfer of power to the current Board of Directors for the Company and the resultant conduct requiring the preliminary injunction. Although the Defendants argue that the Plaintiffs have engaged in "gamesmanship" to suppress the rights of the subscribers, this is likewise disingenuous.

Idaho Code § 30-30-106(1) provides that if, for any reason, it is impractical or impossible for a corporation to call or conduct a meeting, then a director, or member (i.e., Subscriber) may petition the district court to order that such a meeting be called in such a manner as the court finds fair and equitable under the circumstances. Here, the Company Bylaws provide that the Annual Meetings "shall be held at the place designated by the Board of Directors" and "shall be held on such date and at such time which may, from time to time, be designated by the Board of Directors." Bylaws §§ 2.4 and 3.9.1. The Court does not find that it is impractical or impossible for the Company to call or conduct a meeting.

In this case, the Court previously found, and continues to find, that the timeliness and terms of the Board members have been significantly affected by the proceedings in the instant

and previous litigations, and that there has been persistent and further delay in handing over all of the Company books which was to be confirmed by the Special Master that the Court appointed.⁷ The appointment of the Special Master was ordered in the Court's March 29, 2022 Findings, for the limited purpose of conducting an accounting and determining whether all Company books and records have been transferred to the Plaintiffs. (March 29, 2022 Findings, p. 23). The parties were to agree or submit the names of three potential Special Masters to the Court within 14 days of the March 29, 2022 Findings. Then, the Special Master was to report back to the Court within 60 days following the selection. The parties finally stipulated to Kirtlan Naylor being appointed, and the Court entered the Order on January 31, 2023. The sixty day report has yet to be filed, due to no fault of the Special Master.

After considering the Court's discretion provided for in I.C. § 30-30-106(1), the fact that the Special Master's report is still outstanding, and due to the continuing conduct and the circumstances presented, the Court declines to mandate that the Annual meeting be held during the specific month of September, or mandate that a Special Meeting be held as requested. The Court continues to order that the meetings should be held within a reasonable time. Although the Defendants disagree, the Plaintiffs held an annual meeting in 2022 in the manner in which the Court authorized under its powers provided for in I.C. § 30-30-106.⁸

⁷ As of the writing of this decision, the handing over of all Company records may be complete as the Defendants argue, or they may not as the Plaintiffs argue. The Court lacks the Special Master's Report to confirm such assertions.

⁸ To the extent that at the 2022 annual meeting an election for seat E was not had, the issues of the term-lengths for the seats were still in dispute. The Court's decision herein resolves that issue. Although the Court recognizes that it could mandate a special meeting in regards to seat E, the Court declines to do so as the Defendants have not complied with the provision requiring them to turn over all Company books, or at the very least, due to the fact that the Court has still not received the Special Master's report. To mandate a special meeting in these circumstances, in the Court's opinion, would not be fair and equitable under I.C. § 30-30-106(1) and would only reward the Defendants for their noncompliance and prior conduct.

Accordingly, the Court continues to decline to mandate a Company meeting until such time as the Court's previous orders are complied with. The Court likewise declines to order that the annual meetings be held within the month of September. The Bylaws allow the Board of Directors discretion to hold such meeting on such date and time to be designated by them. To be clear, the current Board shall hold an annual meeting in 2023 as required by the Bylaws and at such time and place as they determine as stated herein.

D. The Board of Director seats are Dennis Largent (Seat A), Mary Cordova (Seat B), Chuck Steele (Seat C), Julie Stillman (Seat D), and Rolly Woosley (Seat E), and the terms of each were extended by one year pursuant to the Court's March 29, 2022 Order and Findings.

The parties agree that Dennis Largent holds seat A, Mary Cordova holds seat B, Chuck Steele holds seat C, Julie Stillman holds seat D, and that Rolly Woosley holds seat E. However, the issue of contention is when did these terms begin and when will they expire. The Defendants seek the court to confirm that two of the seat terms will expire this year, and that the other three terms have already expired pursuant to § 3.5 of the Bylaws.

Specifically, Defendants assert that the terms of seats A and B will expire in September 2023; that the terms of seats C and D expired effective September 2022; and that the term in seat E expired in September 2021. The Plaintiffs, on the contrary, seek a declaration that seats A and B have a 3 year term, seats C and D have a 2 year term, and seat E has a 1 year term, with the date for determining the terms be from March 2, 2021, essentially "resetting the clock" back to the 2011 initial terms stated in §3.5. Thus, they argue that the only seat that has expired and would be up for election in 2023 would be seat E.

In the Court's March 29, 2022 Findings, the Court determined that under the Bylaws § 3.5, "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. However, after this initial election, 'the terms of office for each seat shall be three (3) years.'" (March 29, 2022 Findings, p. 28). Although an annual meeting had not been held between 2014 and 2020 (six years), other annual meetings seemingly had occurred since 2011 when the Company was formed. The Court also extended all terms of the sitting Directors by one year. (March 29, 2022 Findings, p. 28). Since the year of the Company's formation is not in dispute, the term lengths and calculation of which seats were up for election in each year is easily calculable. Although an election may not have been held in particular years, in contravention to the bylaws, the Director in that seat continued to serve. I.C. § 30-30-605.

In determining this issue, the Court does not ignore the prior conduct that has occurred during the litigations between the parties, and the resultant Court Orders and Findings of Fact. Previously, the Defendants challenged the legitimacy of the election and the validity of the board in the prior litigation. They now challenge the length of the terms after their previous obstruction and resistance to transfer the authority to the duly elected board members. In determining that a preliminary injunction should issue in the previous litigation, the Court found, among other things, that

[g]iven the Defendants' superior knowledge of the Company and their role as purported Officers and members of the Board, it would be unconscionable to allow them to acquiesce in a legitimate voting process and then seek to invalidate it. This is especially true given that . . . the Subscribers were authorized under the Bylaws and Idaho's Nonprofit Corporation Act to take the actions they took.

March 2, 2021 Order Granting Motion for Preliminary Injunction, p. 18, CV08-20-0247. The conduct that was found to occur gives the Court pause.

In the earlier litigation, and following the trial in this case, the Court found that Defendant-Johnson had 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. (March 29, 2022 Findings, p. 5). The Court also found that no meeting had been held for at least six years.” *Id.* Defendant-Johnson also stated at the September meeting that “there was no Board.” *Id.*

The Court further found that although the Bylaws require annual meetings, Defendant-Johnson and previous Board members failed to hold annual meetings. *Id.* After the election, Defendant-Johnson caused a cease-and-desist letter to be sent to the new Board, stating that she and two others comprised the valid Board of Directors, despite the election and vote of the Subscribers, and she threatened to file a lawsuit and asserted that the election was invalid.⁹ *Id.* at 6. She then held another election wherein she claimed that she was appointed to the board on December 19, 2020 – however, as the Court found, this purported election was not valid. *Id.* Following a hearing on the matter, the Court entered its Order Granting Motion for Preliminary Injunction and Denying Motion to Dismiss filed March 2, 2021, and confirmed that Largent, Cordova, and Steele comprised the legitimate Board of Directors. *Id.*

Moreover, despite the parties’ stipulation, the Defendants did not hand over all of the Company books and records to the new Board within 10 days as required by the stipulation and court order. Rather, records were sporadically handed over in the following months, and beyond August 2021. Defendant-Johnson then attempted to call a special meeting to again try to restore

⁹ Defendants now assert, unsurprisingly, that the North Ridge vote was also invalid.

herself to power. This time, she altered declarations, usurped Board duties by sending out proxies, counting votes, made intentional misleading statements to Subscribers, etc...

As a result of the conduct, obstruction, and interference, the Court, deeming it proper and just, extended the term of each seat by one year. The Court's March 2, 2021 Order confirmed the election of all five board positions. It further noted that there had not been any annual meetings held from 2014 until 2020. However, the failure to hold an annual or regular meeting at a time stated in or fixed in accordance with the bylaws does not affect the validity of any company action. I.C. § 30-30-501. Also, despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed. I.C. § 30-30-605. No Subscriber or Director during this timeframe (from formation to 2020) called a Special Meeting or took any action to remedy the situation created by the Defendants' failure to hold meetings and elections until 2020.

Section 3.5 of the Bylaws clearly sets out the terms of the initial directors until the first annual meeting – this was to allow for future staggered elections.¹⁰ The first annual meeting was in 2011. Consequently, there was a term of three years for Directors filling seats A and B, two years for Directors filling seats C and D, and one year for the Director in seat E. Thereafter, in subsequent elections,

the terms of office for each shall be three (3) years, to the end that the terms for no more than two (2) seats shall expire in any year. If a vacancy occurs, the terms for the person selected to fill the vacancy shall only run through the unexpired term for the seat with respect to which the vacancy is being filled.

¹⁰ The Bylaws were adopted by the Board of Directors on January 26, 2010.

Bylaws, § 3.5. Thus, the Defendants are correct that the election for seats A and B were to occur in years 2014, 2017, and 2020; the election for seats C and D were occur in years 2013, 2016, and 2019, and the election for seat E was to occur in 2012, 2015, and 2018.

Consequently, per the Bylaws, the election in 2020, where all five board members were elected (or seats filled to finish out previously unelected terms) resulted in the following: Dennis Largent (seat A) and Mary Cordova (seat B) –they were elected for a three year term to expire in 2023; Chuck Steele (seat C) and Julie Stillman (seat D) –they were elected to finish the previous term from 2019, when the previous election was not held, which means that their terms were to expire in 2022; and Rolly Woolsey (seat E) was appointed to finish the previous 2018 term when that previous election was not held –which would mean that his term would expire in 2021. However, based upon the Court’s Order extending the term of each seat by one year, the term lengths were extended as follows: the terms of seats A and B expire in 2024; the terms of seats C and D expire in 2023, and the term of Seat E expired in 2022.

Therefore, at the annual or special meeting for 2023, there should be an election for seats C and D (for a three year term to expire in 2026); and for seat E (to finish out the previous term set to expire in 2025). In 2024, seats A and B shall be up for election, for a term of three years to expire in 2027.

E. The Special Master shall report to the Court his findings concerning the transference of all company books and records, and whether any were destroyed or altered, no later than sixty (60) days. All parties are required to cooperate with the Special Master.

The Defendants agree that they will comply with all orders regarding the Special Master, once identified by the Court. The Court, appointed a Special Master pursuant to IRCP 53(a) and ordered the Defendants to pay for such costs. Specifically, the Special Master’s limited scope

was to conduct an accounting and determine whether all Company books and records have been transferred to the current board, and directed that he report back within 60 days following his appointment. (March 29, 2022 Findings, pp. 22-23). This has yet to occur.

The Order appointing the Special Master was filed January 31, 2023. Although the Court granted the Defendants' Motion for Summary Judgment on February 10, 2023, that did not obviate the remainder of the pending matters or prior orders, including the requirement of the Special Master's report, since all other issues were to be decided, or had been decided, by the Court. (March 29, 2022 Findings, p. 19).

Accordingly, the Court orders that the Special Master's report previously ordered within the limited duties previously proscribed, shall be completed within sixty (60) days from the filing of this decision. The Court declines the Defendants' request to limit the Special Masters' time to thirty (30) days. The Court does this to ensure that the Special Master has sufficient time to appropriately carry out his duties in consideration of his schedule and other obligations as any urgency in the matter, of delay, is of no fault of the Special Master.

Given the current and previous litigation in regards to elections and challenging the results and processes, the Court finds it prudent that the Special Master witness the annual meeting and elections, and any amendment to the Bylaws or Articles that may occur, to include collecting and counting the ballots and proxies to ensure that both the Bylaws and the Court's Orders herein are followed and complied with for 2023. This is a valid exercise of the Court's powers provided for in I.C. § 30-30-106. Given the Defendants' prior actions in regards to the election of the Board, attempts to regain power, and Defendant-Johnson's own actions which were contrary to the Bylaws, the oversight of a Special Master is necessary for the protection of

not only all of the Subscribers, but also the current Board members and Company. This extension of duty shall only be for the meetings and election held in 2023, as they are necessary to get the Company on track, in compliance, and deescalate the conflict which has occurred in meetings since 2020. The additional costs of the Special Master in this regard shall continue to be at the sole expense of the Defendants.

F. The Defendants are enjoined from attempting to hold special meetings not in compliance with the Articles of Incorporation, Bylaws, or State Law.

The actions of Defendant-Johnson since the 2020 election to try to retain and regain control of the Company, and the Court's previous findings and determinations in this regard, warrant the issuance of a Permanent Injunction. Although the Court determined that Equitable Fraud was not a viable cause of action available to the Plaintiffs in this case, the Court does not ignore the Defendants' repeated conduct of ignoring the Bylaws, spreading misinformation, and engaging in a malicious campaign to undermine the members of the Board (to whom she lost the election), all in an attempt to remove the entire Board and re-elect herself. This, the Court concludes, is shocking and self-serving behavior. Given the past conduct, it is clear that Defendant-Johnson will continue to defy or ignore the Court's orders and Bylaws to suit herself, unless so enjoined.

The Court is satisfied, based upon the entirety of the record, that the Plaintiffs have met their burden of showing irreparable injury. This is demonstrable and the conduct probable to continue given the Defendant's actions leading up to, and during, the last three years of litigation centering around her, the Board of Directors, elections, and her attempts to regain control of the Company – or to stay in power. Although the Defendants have argued that the requested relief

invades their rights as subscribers from being able to call a special meeting, this permanent injunction does not.

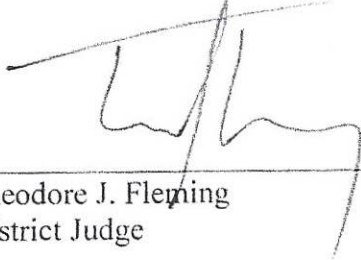
The Permanent Injunction only enjoins the Defendants from acting in violation of the Bylaws to call a special meeting, issue proxies, call elections, issue and count ballots, or otherwise attempt to illegally usurp the functions of the board where such conduct would otherwise be in violation of the Bylaws to do. That is, the Defendants are only enjoined from engaging in activities that the Bylaws do not allow any Subscriber to do. The Defendants otherwise enjoy the same rights as the Articles and Bylaws provide to every Subscriber. In determining that Permanent Injunction be entered, the Court, in this regard, looks to the prior conduct of the Defendant-Ms. Johnson in calling meetings, issuing proxies, ignoring the Bylaws, as well as the other conduct the Court found to have occurred in these litigations. Given the totality, the Court is unpersuaded that “the wrongs will not be repeated.”

CONCLUSION

For the reasons set forth, the Plaintiffs are entitled to the Declaratory and Injunctive relief provided for herein, and the Court enters a separate Judgment in accordance to these findings and conclusions concurrently herewith.

IT IS SO ORDERED.

DATED this 12 day of May 2023.



Theodore J. Fleming
District Judge

CLERKS CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent to the following via email:

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Dated May 12, 2023.

MARY PRISCO
Clerk of the District Court

By: Angel O'Brien
Deputy Clerk