Russell M. Finestein, Esq.
Attorney ID# 014191981
FINESTEIN & MALLOY, L.L.C.
6 Commerce Drive - Suite 304
Cranford, New Jersey 07016
(973) 635-4500

Attorneys for Defendants, Nicky C. and Maria A. Basich, Daniel and Sally Binder, Craig and Ashley Bossong, Jamie Bozinoski, Joseph Brown, Simon and Danielle Burgess, Linda Casey and Meghan Mitchell, Christian Michael Caporrino, Rachel and Michael Ciliento, Anne F. Crowe, Robert and Ashley Edwards, Darren Ferwerda, Paul and Kristin Fowler, Fernando X. Franco, Maria F. Izquierno, Brian and Elizabeth LaForgia, Matthew Hoyt Goodrich, Jessica Goodrich, Robert and Barbara Goworek, Salvatore Grassi, Kelly J. Dontje, Patrick R. and Janinie F. Gribbin, Robert and Luigia Graniero, Giancarlo and Diana Grieco, Donald and Loretta Hilpmann, Brian and Lila Hrenenko, Edward Hudzina, Keith Iorio, Amanda Arditti, In Te Jang, Warren and Margaret Jensen, Justin and Lisa P. Karpowich, Brian and Nevenka Kechejian, Peter and Erinda Kikot, Peter S. and Margaret A. Kimmerle, Dennis and Ermira Kyle, Seth and Rebecca Livesey, Andrew T. Luciano, Christopher and Meghan Maccarrone, Paul Maybeck, Linda M. Meyer, Lora Miller, Inga Nastaskin, John M. and Dena Poalillo, Sean M. Pouch, Elisha M. Cannata, Sandra Quinlan, Christopher H. and Danielle M. Rowland, John Douglas Reger, Sarah Avery, Gregory Reisch, Michael J. and Eileen Renowden, Anthony Rinaldi, Michele Bonagura, Kevin and Heidi Rooney, Rosemarie M. Russo, Christopher and Laura Santimauro, Cari and Brad Segall, Susan and Richard Sharber, Nancy Spreen, Drew Thomas and Meghan Leigh Storms, Paul and Susan Ten Eyck, Ten Eyck Properties, LLC, Joseph and Graziella Valenti, John and Debra Walsh, Dawn Weber, Anthony Joseph Zizzo, Jr., Courtney Zizzo, Thomas and Susan Downey, Michael Migliaccio and Bruce Charles and Amy Jane Tyra

---

RAMAPO MOUNTAIN LAKES, INC., Plaintiff, v. OWNERS OF PROPERTY IN RAMAPO MOUNTAIN LAKES, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO.: L-075-17 Civil Action **ORDER**

THIS MATTER having been brought before the Court on the motion of Finestein & Malloy, LLC, attorneys for the FM Defendants, for reconsideration under Rule 4:49-2, of the Court's December 21, 2018 Order and Decision (**"Decision"**) granting partial summary judgment in favor of Plaintiff Ramapo Mountain Lakes, Inc. (**"Plaintiff"**) on Count II of the Complaint, and the Court having considered the submissions of the parties and the arguments of counsel, and for other good cause shown:

IT IS ON THIS 1st day of March, 2019:

ORDERED that the FM Defendants' motion for reconsideration under Rule 4:49-2 is hereby granted in part and denied in part*; and it is further

ORDERED that Plaintiff's motion for partial summary judgment on Count II of the Complaint is hereby granted; and it is further

ORDERED that service of this Order shall be complete upon service on all counsel of record via eCourts.

Hon. Christine A. Farrington, J.S.C. Ret'd, t/a Recall

[X] opposed

[ ] unopposed

*For reasons set forth in the attached rider.

This matter comes before the court by way of five motions for reconsideration of the court's December 21, 2018 Order granting partial summary judgment to plaintiff on Count II of the amended complaint. The Cole Schotz defendants move for reconsideration of the order which (1) denied their application to declare the by-laws adopted by RMP are null and void and acts by the RMP pursuant to those by-laws void ab initio; (2) barring RML from obtaining liens on properties or foreclosing on them Riker and Saul Ewing defendants move for reconsideration of the order granting plaintiff partial summary judgment on Count II of the amended complaint alleging the court failed to address the expert report of Christine Li. Further, that the court failed to reconcile the Restatement with common law regarding notice in the chain of title, failed to consider changes to the RML community since its original development and failed to address defendants' argument regarding the vote on the By-laws. The Riker defendants, joined by Saul Ewing defendants, seek reconsideration of the order granting partial summary judgment and further granting the Riker defendants cross-motion for summary judgment, granting their motion declaring the RML amendment of its By=Laws void and ultra vires and further seeking an order barring RMP from assessing the Riker defendants and/or filing liens against their properties or foreclosing same pending final judgment. The McCarter English defendants join

the Riker motion and further seek an order that RML's board went beyond the changes that were required by PREDFDA. The Finestein & Malloy LLC defendants join Riker, Saul Ewing and Cole Schotz. Finestein defendants further allege the court erred in determining properties transferred before the recordation of the Indenture and Tripartite Agreement would have had notice of the existence of the RMP via the filed maps, and that title searchers and insurers failed to adequately research and assess the chain of title to the properties. The Law Office of Rajan Patel defendants join the motions filed by the Riker, Cole Schotz, Saul Ewing, McCarter English and Finestein defendants.

The motions are made pursuant to Rule 4:49-2 which provides that a motion to alter or amend a judgment must state with specificity the basis which it is make, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or erred. Cummings v. Bahr, 295 N.J. Super 374 (App. Div. 1996). The motions must be denied unless the movants can demonstrate that the court was palpably incorrect or irrational. D'Atria v. D'Atria, 242 N.J. Super. 324 (Chan. Div. 1990).

In the underlying motion, plaintiff sought partial summary judgment on Count II of its amended complaint seeking an order that PREDFDA, N.J.S.A. 45:22-21, et seq. mandated that all owners in a planned real estate development are members of the

association and that Ramapo Mountain Lakes is such a development. The motions filed by defendants do not convince the court that it erred in determining the plain language of the statute, the original documents and the case law support the conclusions of the court's December 21, 2018 decision and order. The opinion noted that the character and amenities of RML have changed and diminished. The opinion, however, noted that the assessments RML seeks from defendants are in the public interest for the required maintenance of those still existing lakes and dams, regulated by the New Jersey Department of Environmental Protection/Dam Safety section and governed by the Dam Safety Act, N.J.S.A. 58:4-1 et seq. As noted during argument, the court fully comprehends that the defendant property owners are not the only beneficiaries of these dams. Down-stream property owners, not part of the association, benefit as much if not more from the maintenance of these dams. The sharing of the burden of the maintenance of the lakes and dams is not an issue properly before this court. Recourse, if any, is through the legislature.

Similarly, regarding defendants' dissatisfaction with the court's assessment of their experts' opinions. The court does not find Ms. Li's conclusions create an issue of fact issue; or that Ms. Li's and Mr. Grabas' opinions establish that the filed maps and deed from National House and Farm, do not provide

notice that an association exists. As stated in the court's December 21, 2018 opinion, the court finds no fact issues, and is not bound by the opinions of an expert on questions of law. The court found and continues to find that the chains of title for the Finestein properties and others, include the National House and Farms deed and reference the seven filed maps of RML. The court found, and continues to find, that subsequent purchasers, including defendants, had notice of the common development plan, and the expiration o the original restrictions of record in 1960, do not change that conclusion. Similarly, although the court is supported in this conclusion by Lawrence Fineberg in his Handbook of New Jersey Title Insurance, who cautions title companies to set up a requirement in Schedule B, Section 1 of their binders whenever a homeowners association has existed to avoid liability on the very same issues which are before the court, the court did not rely upon Mr. Fineberg. The court did rely upon Camp Clearwater v. Plock, 52 N.J. Super. 583 (Chan. Di. 1958).

Defendants cite Palamarg Realty Co. v. Rehac, 80 N.J. 446 (1979) for the proposition that the court erred in failing to accept the opinions of their experts in determining whether the documents in a chain of title provide sufficient notice to subsequent purchasers. Defendants claim Palamarg stands for the proposition that a purchaser is "only bound by notice of those

matters which can be discovered by a reasonable search of a particular chain." The court finds it does not. Palamarg involved two competing chains of title. In discussing the rigorousness of the search, the court noted:

> We may take judicial notice of the fact that it is the custom of title searchers and conveyancers in New Jersey to search a title only for sixty years and until a warranty deed is found in the chain of title. A sixty-year search undertaken in November, 1973 would extend back to November, 1913. A further search for a warranty deed would presumably end upon discovery of the Asbury Company to Taylor deed recorded in April of that year. Thus, the deed from Asbury Company to Appleby Estates would not be discovered. Would such a title search meet the customary requirements as established by conveyancing practice in New Jersey? 10 If so, how much force should be given to this fact? Should we adopt the custom of conveyancers and make the sixty-year search convention a rule of law? ***How could this be made to harmonize with the Recording Act and other relevant statutes? To what extent and over what period of time has reliance been placed on the sixty-year search? How did this custom develop and upon what law does it rest? What is the attitude of title companies to the problem that this case presents?*** We would prefer not to decide questions with such potentially far-reaching effects in a factual vacuum.
>
> We are mindful that the art of title searching, upon which so much of our conveyancing practice rests, has been created in very large part without the aid of legislation and has received little attention in judicial decisions.
>
> No statute has ever mentioned search, much less indicated the time or records over

> which it must extend . . . . (Philbrick, supra, 93 U.Pa.L.Rev. at 137)
>
> On remand to the trial court, expert testimony should be offered and received as to the customs and usages of the conveyancing bar and title companies with respect to what has been discussed above. It might be helpful to invite the New Jersey Land Title Insurance Association to appear and participate as Amicus curiae. The trial judge is to make findings of fact and conclusions of law with respect to the issues before him. We do not retain jurisdiction but any allegedly aggrieved party may make application directly to this Court by motion for direct certification immediately following the rendition of the trial court opinion and judgment.

This court finds Palamarg does not address the issue of whether a title search would put defendants on notice of whether they were part of an association, but rather, *the reasonableness of the title company's limitation of its search*. Palamarg goes to the potential liability of the title companies, not whether the deed and maps were in the chain of title.

The issue which concerned the court in granting reconsideration was whether RML, prior to final judgment may assess dues and assessments and impose liens and ultimately foreclose upon properties who are delinquent in payment. The Riker defendants allege RML should not be permitted to assess pending adjudication of the defenses of abandonment, waiver

and estoppel. Having found that PREDFDA applies to RML, and all property owners are members of RML, those members have a contractual obligation via the By-Laws, and are required to comply with those By-Laws. "One of the core foundations of a common interest community is a sharing of expenses for maintenance among the residents." Mulligan v. Panther Valley Prop. Owners Ass'n., 337 N.J. Super. 293 (App. Div. 2001). Having found that PREDFDA applies to RML, the court found the actions taken by RML pursuant to PREDFDA were lawful and not void ab initio or ultra vires.

The Riker and Finestein defendants allege the court "did not actually identify what provision(s) of the 2017 amendments to PREDFDA RML was complying with when finding RML was complying with those amendments." "Indeed, [the Riker defendants continue] the court undertook no analysis as to whether PREDFDA obligates associations to mandatorily assess their members and impose liens. . ." The Finestein defendants go further suggesting, ". . . The Court failed to indicate what specific section of PREDFDA imposed this requirement. The FM Defendants respectfully submit that the Court cannot indicate what section because it does not exist." Whether that statement is respectful is, in

the court's mind, disputable. To the extent the December 21, 2018 decision was unclear, N.J.S.A. 45:22A-46 mandates the inclusion in the By-Laws of the manner for collecting from owners their respective shares of common expenses:

> 45:22A-46 Bylaws; requirements; amendments.
>
> 4. The bylaws of the association, which shall initially be recorded with the master deed ***shall include, in addition to any other lawful provisions, the following***: N.J.S.A. 45:22A-46 Bylaws; requirements; amendments. . .
>
> c. ***The manner of collecting from owners their respective shares of common expenses*** and the method of distribution to the owners of their respective shares of common surplus or such other application of common surplus as may be duly authorized by the bylaws. (emphasis provided)

The court finds the statute to be sufficiently clear and analysis of the clear and unequivocal language would be redundant.

The court finds that the defenses of the Riker and joining defendants as to abandonment, waiver and estoppel go to assessments made prior to the 2017 amendments to PREDFDA only. Therefore, no liens shall be placed on owners' properties, nor shall foreclosure proceedings be instituted for dues or assessments made prior to the 2017 amendment to PREDFDA. As to the ability of RML to impose liens and other measures to compel payment the court cites Mulligan v. Panther

Valley Prop. Owners Assn., supra. The December 21, 2018 order of the court is modified in this respect only. All other arguments made by defendants, whether specifically addressed herein or not, have been considered and deemed not to have met the standard of Rule 4:49. To the extent the Riker defendants were seeking a stay, which application the court finds to have been deficient, the stay is denied pursuant to Crowe v. DeGioia, 90 N.J. 126 (1992).