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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY

COMMITTEE FOR A BETTER
TWIN RIVERS (CBTR);
EDWARD McDONALD;
EMILY McDONALD;
DIANNE McCARTHY;
HAIM BAR-AKIVA; AND
BRUCE FRITZGES,

Plaintiffs,

DOCKET NO. C-121-2000

vs.

TWIN RIVERS HOMEOWNERS'
ASSOCIATION (TRHA); TWIN
RIVERS COMMUNITY TRUST;
SCOTT POHL (TRHA PRESIDENT);
AND JENNIFER WARD
(TRHA ADMINISTRATOR),

CIVIL ACTION

AMENDED
COMPLAINT FOR INJUNCTION AND
DECLARATION OF RIGHTS

Defendants.

1. Plaintiff COMMITTEE FOR A BETTER TWIN RIVERS (CBTR), a nonprofit, unincorporated association with offices at 59 Probasco Road, East Windsor, New Jersey, EDWARD McDONALD and EMILY McDONALD, residing at 580

Edison Drive East Windsor, New Jersey, DIANNE McCARTHY, residing at 59 Probasco Road, East Windsor, New Jersey, HAIM BAR-AKIVA, residing at 397 Bolton Road East Windsor, New Jersey, and BRUCE FRITZGES, residing at 61 Dennison Drive, East Windsor by way of Complaint say:

INTRODUCTORY STATEMENT

2. This is an equitable action against the defendants for temporary and permanent injunctive relief and declaratory judgment.

3. Defendants have engaged and are engaging in actions and practices that deny to plaintiffs the right of democratic participation in the governing affairs of the Twin Rivers Homeowners' Association (TRHA) as guaranteed to them by common law, statute and the New Jersey Constitution.

4. Plaintiffs have no adequate remedy at law to protect their rights and seek equitable relief to prevent further injury that cannot be compensated with monetary damages.

PARTIES – PLAINTIFFS

5. The Committee for a Better Twin Rivers (CBTR) is a nonprofit, unincorporated association, created in 1998, and comprised of concerned members of the TRHA. CBTR is involved in monitoring and addressing the actions and decisions of the Twin Rivers Board and Trust Staff. CBTR is concerned with the betterment of Twin Rivers and works as a political organization to campaign for change and support candidates for election to the Twin Rivers Board of Trustees.

6. CBTR is currently supporting candidates for the 2000 election of the Twin Rivers Board of Trustees.

7. Plaintiff, Edward McDonald is Chairman of the Committee for a Better Twin Rivers (CBTR) and has been a resident of Twin Rivers since 1988.

8. Plaintiff, Emily McDonald has been a resident of Twin Rivers since 1988 and is currently a candidate for the 2000 election for the Twin Rivers Board of Trustees, running with the support of the CBTR.

9. Plaintiff, Dianne McCarthy has been a Twin Rivers resident since 1980 and is a member of the CBTR. Dianne McCarthy is also a current member of the Twin Rivers Board of Trustees.

10. In November 1998, Dianne McCarthy successfully ran for a position on the TRHA Board of Trustees. She was elected for a three-year term and is up for reelection in 2001.

11. Plaintiff, Haim Bar-Akiva has been a Twin Rivers resident since 1980 and is a member of the CBTR.

12. Plaintiff, Bruce Fritzges has been resident of Twin Rivers for 28 years. He is not a member of CBTR. He is a plaintiff for purposes of the relief requested in Count Nine only.

13. All of the above plaintiffs are members of the TRHA and reside within the jurisdiction of the TRHA.

PARTIES – DEFENDANTS

14. At all relevant times Scott Pohl who resides at 55 Ithaca Road East Windsor, NJ 08520, was the President and a member of the Board of Trustees of the TRHA.

15. At all relevant times Jennifer Ward, who is employed at 92 Twin Rivers Drive West East Windsor, NJ 08520-5299, was the administrator of the TRHA and TRCT. She is a defendant for purposes of relief only.

16. At all relevant times the TRHA, its bylaws, and Board were the governing body of the Twin Rivers Community Trust (TRCT). The Twin Rivers Community Trust was created by Indenture dated November 13, 1969 for the purpose of owning, managing, operating and maintaining the residential community property of Twin Rivers. (For the purposes of this complaint TRHA and TRCT are used interchangeably).

17. Defendant TRHA is a non-profit corporation, incorporated under the laws of the State of New Jersey.

18. At all relevant times the TRHA which is located at 92 Twin Rivers Drive West East Windsor, NJ 08520-5299, and its governing body held actual and/or de facto jurisdiction over all the complained of matters.

FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

19. Twin Rivers is a Planned Unit Development (PUD), established under the laws of the state of New Jersey in 1969, in East Windsor, Mercer County, New Jersey.

20. A recent study indicates that "one out of every six Americans (42 Million people) currently live in some form of common interest community." See Patrick K. Hetrick, Of "Private Governments" and the Regulation of Neighborhoods: The North Carolina Planned Community Act, 22 Campbell L. Rev. 1, 6 (1999).

21. Twin Rivers was the first development of its kind in the state of New Jersey.

22. Twin Rivers occupies approximately 700 acres in East Windsor. Approximately 130 acres are TRHA property utilized for the general use and welfare of all TRHA members and Twin Rivers Residents.

23. Twin Rivers is composed of approximately 3,000 residential units occupied by approximately 10,000 residents. These units are owner occupied, leased, sublet, and rented.

24. Twin Rivers is a sprawling community that is comprised of four sections referred to as Quads separated by State Highway Route 33. See Exh.

25. The roads maintained by the TRHA intersect and overlap with county and municipal roads.

26. The demographic composition of Twin Rivers is diverse, including people of all ages, religions, racial and ethnic backgrounds and political ideology.

27. The Twin Rivers community is relatively self-sustaining and self-contained. Within its boundaries are a shopping center, religious institutions, public schools, county library, recreation facilities, and a large maintenance yard similar to that of a municipality.

28. The Twin Rivers Trust Office contains many departments and offices which regulate the daily life of Twin Rivers residents similar to a municipality.

29. The recreational facilities at Twin Rivers include Olympic size swimming pools, tennis courts, handball and racquet ball courts, play grounds, softball fields, and community room.

30. Recreational activities available in Twin Rivers include, but are not limited to, child care and summer camps for resident children, exercise groups, musical events, community street fairs, and organized sports teams and events.

31. Twin Rivers maintains a community room as a common element for the use and benefit of the residents. The community room is the local public forum where resident meetings take place, community affairs are handled, and a host of other activities and services traditionally provided by a municipality are centered.

32. When viewed on a map Twin Rivers appears to be a separate municipality. (See Exh. A).

33. A branch of the Mercer County library is located in Twin Rivers. It was established in 1981 by a land grant from the TRHA. The County library shares the same parking lot as the TRHA's community room.

34. The Contractor first establishing Twin Rivers remained a voting member until on or before January 1, 1981, at which time control over the Twin Rivers community functions were turned over to the governing Board of Trustees (used interchangeably with Board of Directors).

35. The TRHA Board of Trustees (Board) is the governing body of the Twin Rivers Homeowners' Association.

36. The Board of Trustees performs many functions typically left to municipal government. The Board creates regulations, the de facto equivalent of municipal ordinances. Such regulations include: use of the recreation facilities; hiring of the administrator; control of board members conduct; parking control; road maintenance; aesthetic and architectural control; and the negotiation of contracts for services, such as trash collection, construction, and legal representation.

37. The Board of Trustees creates many committees similar to those of a municipal government. These committees include: Architectural Design & Review; Budget/Finance; Clean Sweep; Parking; Newspaper; Nominating; Public Relations; Recreation/Concert; and Recycling.

38. The Board of Trustees appoints a chairperson to each of the formed committees similar to a municipal government.

39. The Board of Trustees appoints a Trust Administrator, Physical Properties Manager, and Board Secretary.

40. Twin Rivers has many of the attributes of a municipality and has more inhabitants than many municipal corporations in New Jersey. It resembles a "company town." See Guttenberg Taxpayers and Homeowners Ass'n v. Galaxy Towers Condominium Ass'n, 297 N.J. Super. 404, 411 (1996). The Advisory Commission on Intergovernmental Regulations (ACIR) Report on Residential Community Associations notes that RCAs (synonymous with PUD or planned unit development), "are communities of people that perform public functions, they are necessary actors in interlocal intergovernmental relations." These associations are described as a "mini-government." See Harvey Rishikok and Alexander Wohl, Private Communities or Public Governments: "The State Will Make the Call," 30 Val. U. L. Rev. 509, 526 n. 102-103 (1996).

41. Ostensibly, Twin Rivers operates as a municipality. The Superior Court has referred to Twin Rivers as "not unlike a small city." See Kerekes v. Twin Rivers, No. C-26-95 (N.J. Ch. Feb. 3, 1996).

42. Beginning in March 2000, the TRCT required all residents to pay \$3.00 (three dollars) per month toward the cost of cable television fees.

43. Plaintiffs CBTR have at all relevant times been considered in political opposition to Scott Pohl, his allies and the Trust administrator.

44. The policies of the TWHA complained of herein, Twin Rivers has the attributes of a "political isolation booth" where only one side of issues are expressed, as warned against in State v. Kolz, 114 N.J. Super. 408, 416 (1971), and cited in Guttenberg Taxpayers and Homeowners Ass'n v. Galaxy Towers Condominium Ass'n, 297 N.J. Super. 404, 410 (1996).

COUNT ONE

[POLITICAL SIGNS]

45. Plaintiffs repeat the allegations contained in paragraphs 1 through 44.

46. On September 23, 1999 the Board enacted Resolution No. 99-11. This resolution prohibits Twin Rivers Members from displaying political signs, including signs pertaining to the election of Twin Rivers Board members, except in very isolated and obscure locations.

47. Resolution 90-11 states that Members who post signs may be subject to fines ranging from \$50 and \$500, legal costs, and attorneys fees.

48. The Board permits Twin Rivers residents the right to post political signs on their own property not more than three feet from their residence. On information and belief, signs posted in such places are generally not visible to passing motorists or pedestrians.

49. Displaying a sign from a residence often carries a message quite distinct from placing the same sign in another location or conveying the same text or picture by other means. The identity of the speaker and location where a message is received are important components in an attempt to persuade. A person who puts up a sign at her residence often intends to reach neighbors who could not be reached nearly as well by other means. City of Ladue v. Gilleo, 512 U.S. 43 (1994).

50. The 130 acres of community land, reserved for the purpose of serving the community as a common element, is excluded from use for the posting of political signs. This community property is the clearly visible area available to effectively communicate with all Twin Rivers residents through the posting of political signs.

51. If left with only the current means of posting political signs, Twin Rivers residents will be restricted to communication with only their immediate neighbors, people with whom Twin Rivers residents have regular interaction by simple proximity. Political communication is therefore reduced to the daily "chatter" of nearby residents.

52. Resolution 90-11 impermissibly restricts the free speech rights of members secured by the New Jersey State Constitution and the common law.

53. On information and belief, the restrictions against posting signs on one's own lawn more than three feet from a house are selectively enforced against supporters of CBTR.

Wherefore plaintiffs pray for the following relief:

- Injunctive relief requiring the Board to allow the posting of political signs on their own property and on common elements under reasonable regulation.
- Reasonable attorneys fees and legal expenses
- Any other relief that the Court determines equitable or just.

COUNT TWO

[ACCESS TO THE COMMUNITY ROOM]

54. Plaintiffs repeat the allegations contained in paragraphs 1 through 53.

55. TRHA operates a community room where meetings and other events are regularly held.

56. The TRHA Board and its various committees utilize the community room for meetings and conducting business.

57. On information and belief, the controlling members of the TRHA have utilized the community room to hold public meetings for campaigning, promoting their positions, and attacking opposing opinion. In effect the TRHA Board has regulated who may speak in the community room to benefit their continued control of the Board.

58. On information and belief, at times in the past, the community room has been used without charge for meetings unrelated to official TRHA business at which matters concerning the operation and management of the Twin Rivers community have been a major topic of discussion.

59. There is no other meeting room within the Twin Rivers community which is available to Plaintiffs to hold public gatherings concerning community affairs.

60. TRHA Resolution 98-15 provides a scale for rental of the community room to TRHA members for family and other gatherings. A rental fee of \$100 and a refundable clean-up deposit of \$250 is required for the use of the room for family parties. For other types of meetings, a rental charge of \$250 and a refundable fee of \$500 is required.

61. Plaintiffs, specifically CBTR, have been informed by Defendants that in order to use the community room for a meeting to discuss matters concerning the Twin Rivers community and/or the Twin Rivers Board elections, they must pay the \$200 rental fee and post in advance a \$500 clean-up deposit.

62. It is unreasonable to require TRHA members to post \$750 in order to conduct a meeting to discuss community affairs and elections.

63. Plaintiffs have also been informed that they must provide a certificate of insurance showing liability for fire and property damage coverage and naming the Twin Rivers Trust as an additional insured party.

64. A requirement that Plaintiffs obtain an insurance policy for the use of the community room is unreasonable under the circumstances, since on information and

belief the TRHA already has insurance coverage for events in the community room. See Green Party v. Hartz Mountain Industries, 164 N.J. 127 (2000).

Wherefore plaintiffs pray for the following relief:

- A declaration that TRHA Resolution 98-15 denies them equal protection of the laws and unreasonably and unconstitutionally violates Plaintiffs' right to access to the community room on a fair and equitable basis.
- Temporary and permanent injunctions mandating TRHA to allow Plaintiffs to utilize the community room in the same manner as other similarly situated entities.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT THREE

[ACCESS TO THE TWIN RIVERS TODAY NEWSLETTER]

65. Plaintiffs repeat the allegations contained in paragraphs 1 through 64.

66. Twin Rivers Today (TRT) is the official newspaper of Twin Rivers.

67. TRT is published and distributed monthly to each resident by the TRHA.

68. Resolution 99-1 designated the publication of any new resolution in TRT as sufficient notice to residents concerning their responsibilities to the TRHA. Residents of Twin Rivers are clearly expected, if not obligated, to read TRT.

69. TRT's publisher regulates and sells advertising space in the TRT. The TRHA Board President, Defendant Scott Pohl, regulates all other content of the TRT.

70. TRT is the property of the TRHA and constitutes a common element.

71. Defendant Scott Pohl, as President of TRHA and editor of TRT, regularly utilizes TRT as a vehicle for promulgating his own political views. This expression includes: endorsing candidates for the Board of the TWHA, criticizing political opposition, and presenting matters concerning himself in a manner beneficial to his position and in opposition to CBTR. His views frequently are displayed on the front page of TRT. (See Exh. B).

72. Defendant Scott Pohl's unabated access to and control over the TRT newspaper frequently results in the prominent display of his supporters' comments and/or opinions.

73. Since on or before September 2000, defendant Scott Pohl has regularly published on the front page of the TRT Newspaper, a "thermostat" measuring the costs of litigation and other expenses purportedly and frivolously caused by the CBTR and its members. This criticism of the CBTR has been utilized for no purpose other than to create adversity and dislike for CBTR candidates for the Board and its members.

74. When defendant Pohl has published Plaintiffs views in TRT, these have been placed in the interior of the newspaper in an opinion section and usually followed by a rebuttal by him or another person of similar political allegiance, discounting Plaintiffs' opinions as false. In addition to undermining any views expressed by Plaintiffs in the TRT, Defendant Pohl has also limited Plaintiffs' expression to the opinion section. Plaintiffs viewpoints are never expressed in the news section as are Defendant Pohl's contributions. Plaintiffs are therefore deprived of the status that is afforded Defendant Pohl's opinions, which appear as though they are the news and official views of Twin Rivers.

75. The TRT newspaper is one of the only effective means of communicating with residents of Twin Rivers. By exercising monopoly control over the editorial content of TRT, the TRHA prevents opposing views from gaining access to the most influential and commonly utilized source of local information for TRHA members and residents.

76. TRT is intended for the benefit of the community, it is a community resource, and it was not intended to perpetuate the views of one particular resident or group. TRT is intended to serve the best interests of the community as a whole, not a particular group that has gained control of the Board.

77. A recent Community Associations Institute (CAI) poll indicates that 93% of homeowners in planned unit communities read their community newsletters. See <http://www.cairf.org/research/gallup-9.html>.

Wherefore plaintiffs pray for the following relief:

- A declaratory judgment that the TRT newspaper is a common element.
- A declaratory judgment that all TR residents should have equal access for expression of their views concerning the management of the community.

- A permanent injunction enjoining the president of the Board from using TRT as his own personal political trumpet and requiring the Board to create rules for equal access to TRT by all TRHA members.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT FOUR

[TAPE-RECORDING OF OPEN MEETINGS OF THE TRHA]

78. Plaintiffs repeat the allegations contained in paragraphs 1 through 77.

79. The Board of Trustees' Secretary tape records all Board meetings. The Board does not permit members of Twin Rivers' access to these tapes. On information and belief, after the Secretary prepares the minutes, she then destroys the tapes.

80. TRHA members frequently contest the accuracy of the minutes of the TRHA meeting.

81. Under the state law all board meetings must be open to the TRHA members.

82. On or about October 12, 2000, Plaintiff Haim Bar-Akiva attempted to tape record the meeting of the Board. Plaintiff was instructed that he was not permitted to record the Board meeting and was instructed to turn off the tape recorder.

83. In order to prevent Plaintiff from exercising his right to record the Board meeting, the Board adjourned the meeting when Plaintiff verbally refused to stop the tape recording. The Board later printed in TR Today that business scheduled to be conducted at the meeting was delayed due to Plaintiff's conduct.

Wherefore plaintiffs pray for the following relief:

- An injunction requiring the TRHA Board to allow the tape recording of the Board meetings.
- A declaratory judgment stating that members of the TRHA have the right to tape record all open TRHA meetings.

- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT FIVE

[ACCESS TO FINANCIAL DOCUMENTS]

84. Plaintiffs repeat the allegations contained in paragraphs 1 through 83.

85. Plaintiffs have made repeated requests for financial documents maintained by the TRHA which have been regularly denied without adequate justification.

86. Access to financial documents are governed by Resolution 99-1. Resolution 99-1 requires that all confidential document requests are to be granted upon the approval by a majority of the Board. Upon information and belief, the Board is abusing its discretion when deciding whether to allow access to confidential documents.

87. Plaintiff Haim Bar-Akiva made a request for TRHA financial documents on October 3, 2000 which was denied by the Board Administrator, Defendant Jennifer Ward on October 5, 2000. (See Exh. C and D)

88. The Board denied Plaintiff Bar-Akiva's requests on November 21, 2000, with a blanket statement that his requests were deemed to be an invasion of privacy of residents and employees, without further specification as to how any of the requested documents invaded anyone's privacy. (See Exh. E)

89. The Board abused its discretion when it denied Plaintiff Bar-Akiva's requests for financial documents.

90. TRHA is a non-profit corporation which is bound by New Jersey non-profit corporation statutes. N.J.S.A. 15A:5-28, which is based on N.J.S.A. 14A:5-24 of the New Jersey Business Corporation Act, provides for access by members to corporation books and records. TRHA is bound by this statute and must provide access to the books and records of the corporation to members of the TRHA.

Wherefore plaintiffs pray for the following relief:

- Temporary and permanent injunction disallowing the TRHA Board from denying access to financial documents without specification of the reasons for concealment.

- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT SIX

[RESOLUTION 2000-1]

91. Plaintiffs repeat the allegations contained in paragraphs 1 through 90.

92. In 1999 Plaintiff Dianne McCarthy was elected to the TRHA Board for a three year term.

93. In February 2000 the TRHA passed Resolution 2000-1 purporting to provide the Board with the authority to discipline members suspected of disclosing allegedly confidential information.

94. On March 1, 2000, Defendant Scott Pohl notified Plaintiff Dianne McCarthy of her suspected violations of Resolution 2000-1. All but one of these alleged violations had occurred prior to the enactment of Resolution 2000-1. The allegations were not supported by any details or documentation of the specific acts which constituted her violations.

95. Plaintiff McCarthy did not participate in any of the proceedings brought against her, and was found responsible for the alleged misconduct and subsequently censured on May 25, 2000.

96. Plaintiff McCarthy notified the New Jersey Department of Community Affairs (DCA) of the Board's enactment and application of Resolution 2000-1.

97. On September 27, 2000, the DCA notified Defendant Scott Pohl that many of the provisions of Resolution 2000-1 were in violation of New Jersey law.

98. Since this notification from the DCA, Defendants Scott Pohl and the Board made no effort to correct the unlawful provisions of Resolution 2000-1 or its illegal enforcement against Plaintiff Dianne McCarthy.

99. Resolution 2000-1 is overly broad, vague, and encroaches on the individual rights of Board members and residents.

100. Resolution 2000-1 unduly burdens Board members and denies TRHA members access to vital information concerning their community.

101. According to the DCA, Sections "v" through "vii" of Resolution 2000-1 are in violation of the Planned Real Estate Full Disclosure Act, N.J.S.A. 45:22A-46a. (See Exh. F)

102. Resolution 2000-1 was promulgated in bad faith and is arbitrary and capricious.

103. Resolution 2000-1 has the appearance of being intended for the sole purpose of removing a certain Board member, which is violative of the election and removal process for Twin Rivers Board members. According to the TRHA by-laws, Board members are to be removed only by a vote of the members of the community. Resolution 2000-1 is an effort to circumvent the established procedure for Board member removal.

104. Resolution 2000-1 serves no legitimate purpose.

Wherefore plaintiffs pray for the following relief:

- A declaratory judgment that Resolution 2000-1 is in violation of N.J.S.A. 45:22A-46a and common law.
- A declaratory judgment that Plaintiff McCarthy never violated any resolution and her censure be expunged from the records of the TRHA as though it had never occurred.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT SEVEN

[ACCESS TO VOTING LISTS]

105. Plaintiffs repeat the allegations contained in paragraphs 1 through 104.

106. The TRHA is governed by a Board of Trustees created by the Indenture dated November 13, 1969.

107. The purpose of the Board is to manage, operate, and maintain the Twin Rivers community.

108. There are nine Trustees (used interchangeably with Directors) elected to the Board.

109. Three Trustees are elected annually for a three-year term.

110. The members of the TRHA vote for the Trustees.

111. According to the TRHA by-laws, an owner's vote is weighed according to the value of his/her property.

112. According to TRHA by-laws a member must be in "good standing" to be eligible to vote.

113. A member in good standing is a unit owner who has no outstanding fees, fines, or assessments.

114. The Board has actual or de facto control over which TRHA members are subject to fines.

115. A list of eligible voters, those in "good standing," is prepared by the Board of Trustees, vis-a-vis the Trust Administrator, Defendant Jennifer Ward, and forwarded to an accounting firm.

116. A member of the Board, Plaintiff Dianne McCarthy, has been denied access to the list of eligible voters. On information and belief, other members of the Board do have access to the list of eligible voters.

117. Currently it is unknown what percentage of voters are ineligible to vote and for what reasons.

118. In order to effectively campaign for the elected positions of the TRHA, plaintiffs need access to the lists of eligible voters. The list is necessary to identify and contact eligible voters.

119. The TRCT has recently allowed for conditional access by Plaintiffs to the voter lists. The TRCT has only allowed for the inspection of lists of all Twin Rivers residents without any distinction between those who are eligible and ineligible to vote. In addition, the TRCT has required that an overly broad and unreasonable indemnification agreement be signed before the release of the list. (See Exh. G)

Wherefore plaintiffs pray for the following relief:

- Temporary and permanent injunctive relief requiring the Board to allow the plaintiffs access to lists of eligible voters without unreasonable conditions.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT EIGHT

[ALTERNATIVE DISPUTE RESOLUTION]

120. Plaintiffs repeat the allegations contained in paragraphs 1 through 119.

121. N.J.S.A. 45:22A-4(c) and its legislative history, Senate Act 217, clearly requires defendants to “provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association . . . which shall be readily available as an alternative to litigation.”

122. The current alternative dispute resolution mechanism at Twin Rivers is governed by Resolution 99-4, which was promulgated on March 25, 1999. Resolution 99-4 provides for an inadequate and ineffective system of dispute resolution.

123. Resolution 99-4 limits the definition of a dispute. Paragraph 5 of Resolution 99-4 states that, “[a] dispute shall not include issues relating to (i) the payment or nonpayment of regular and/or special common expense assessments levied against a Unit in accordance with the governing documents, (ii) election issue, nor (iii) alleged noncompliance by the Association or the Association Board with the governing documents or applicable law. Paragraph 5, in essence, exempts the Board from any and all alternative dispute resolution mechanisms in violation of New Jersey law. In particular, it denies ADR for disputes involving assessments for disenfranchisement.

124. Plaintiffs currently enjoy no alternative dispute resolution mechanisms with the TRHA Board and are therefore forced between pursuing costly litigation or acquiescing to the Board’s demands, no matter how unreasonable.

125. Plaintiff Fritzges has been informed that he will not be permitted to vote in the current Board election unless he pays a disputed assessment of \$27.00 arising out of a challenge to a monthly assessment for cable television.

126. On information and belief, the absence of a convenient and inexpensive mechanism for resolving disputes between the TRHA and its members has resulted in the disfranchisement of many other TRHA members. Those members have been assessed various amounts for alleged infractions of TRHA rules and failure to pay disputed assessments. If such members are unwilling to pay those fines under protest and undertaking the substantial expense of a lawsuit against the TRHA for reimbursement, their voting rights are suspended.

127. Thus, by refusing to honor state law and create an alternate dispute resolution system, the TRHA violates both the members' statutory right to an effective dispute resolution system as well as the right to vote.

Wherefore plaintiffs request pray for the following relief:

- Permanent injunction requiring the Board to establish a dispute resolution process as described herein.
- Temporary and permanent injunctions re-establishing the voting rights of Plaintiff Bruce Fritzges and other TRHA members similarly situated.
- Reasonable attorney fees and legal expenses.
- Any other relief that the Court determines equitable or just.

COUNT NINE

[DENIAL OF VOTING EQUALITY]

128. Plaintiffs repeat the allegations contained in paragraphs 1 through 127.

129. The TRHA by-laws provide for the weighted voting in Board elections, with each unit owner casting a number of votes equal to the value of his/her property. The owners of apartment buildings in Twin Rivers cast votes equal to the value of all of their tenancies and the tenants are totally disenfranchised.

130. Since the Twin Rivers Board exercises powers of management similar to those exercised by municipal corporations, this weighted voting scheme violates principles of equal protection embodied in Article I, Paragraph I of the New Jersey Constitution.

131. The TRHA governing board, although elected by TRHA members, is the product of an electoral system that is a substantial variance from the one-person, one-vote principle guaranteed by the New Jersey Constitution.

Wherefore plaintiffs pray for the following relief:

- Declaratory judgment that the weighting voting provision of the TRHA by-laws and charter violates the New Jersey Constitution and must be reformed.
- Reasonable attorneys fees and expenses.
- Any other relief that the Court determines equitable or just.

WHEREFORE, plaintiffs pray for the relief requested in Counts 1 through 9.



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Date: February 12, 2001

CERTIFICATE OF SERVICE

I am employed by Rutgers, The State University of New Jersey, School of Law, Constitutional Litigation Clinic, which is engaged in the practice of law in the County of Essex, State of New Jersey. I am over the age of 18 years and not a party to the within action. My business address is 123 Washington Street, Newark, New Jersey 07102-3192.

On Monday, February 12, 2001, I served two copies of the following:

1. Amended Complaint
2. Certificate of Service

upon:

Barry S. Goodman, Esq.
Greenbaum, Rowe, Smith,
Ravin, Davis & Himmel, LLP
99 Wood Avenue South
Iselin, New Jersey 08830

in this action by placing a copy thereof enclosed in a sealed envelope, via New Jersey Lawyers Service.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

Executed this 12th day of February at Newark, New Jersey.


Quintella L. Hanks