

DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO

Court Address:

4000 Justice Way
Castle Rock, CO 80109

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Plaintiffs:

**Robert Bell,
Edward M. Caswall,
Pamela Colquette,
Mark Dickerson,
Carolyn Groom,
Kurt Huffman, and
John Morton.**

v.

Defendant:

**The Highlands Ranch Community Association, a
Colorado Non-profit Corporation**

Attorneys for Plaintiffs:

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Case Number:

Division:

Courtroom:

COMPLAINT FOR DECLARATORY JUDGMENT

(C.R.S. 13-51-101, et seq.; C.R.C.P. 57)

I. JURISDICTION and PARTIES

1. Defendant Highlands Ranch Community Association (hereinafter “HRCA”) is a Colorado Non-profit Corporation, with its principal place of business at 9568 South University Boulevard, Highlands Ranch, Colorado 80126, in Douglas County, Colorado.
2. The HRCA is an association and master association as defined by and subject to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*
3. The HRCA is subject to its Articles of Incorporation, Bylaws, and Community Declaration for the Highlands Ranch Community Association, Inc. (“Declaration”). A copy of the Declaration is attached as **Exhibit 1**.
4. The affairs of the HRCA are managed by its Board of Directors.
5. Plaintiffs Robert Bell, Edward M. Caswall, Pamela Colquette, Mark Dickerson, Carolyn Groom, Kurt Huffman, and John Morton are residents and homeowners of the planned community known as Highlands Ranch in Douglas County, Colorado, and are each, by reason of their home ownership, members of the HRCA.
6. Plaintiffs have resided in Highlands Ranch for more than five years.
7. Also by virtue of purchasing property in Highlands Ranch, these Plaintiffs, along with every other owner of privately owned property in Highlands Ranch, have agreed to pay assessments and comply with covenant controls imposed by the HRCA. The HRCA has in turn agreed to provide certain services and amenities to its members, and has agreed to act lawfully and without conflict of interest in dealing with its members.

8. Highlands Ranch is divided into 93 Delegate Districts.
9. Pursuant to Section 2.21 of the Declaration, a “Delegate District” is “a geographical area which may constitute any portion or portions of the Community Association Area and from which all Members in that Delegate District shall elect a single Delegate to represent their collective voting power...” See **Exhibit 1** at Section 2.21, p. 5.
10. Delegates are generally elected every two years to represent community members in the HRCA matters. The HRCA considers the delegate to be the voice of the property owners in all Association matters.
11. The Board of Directors for the HRCA is elected by the Delegates.
12. While all private property owners are members of the HRCA, there are several areas in Highlands Ranch that have their own neighborhood associations with a board of directors and a separate assessment fee. These are considered by the HRCA to be "subassociations." Therefore, if a private property owner lives in a subassociation, that owner pays a HRCA assessment and a subassociation assessment for any additional services or facilities.
13. In addition to being individual members of the HRCA by virtue of their ownership of private property in Highlands Ranch, Plaintiffs Caswall, Dickerson, Groom, Morton, and Huffman are also Delegates pursuant to the Declaration.
14. In their capacity as Delegates, Plaintiffs Caswall, Dickerson, Groom, Morton, and Huffman collectively represent the owners of over 1,500 private properties subject to the HRCA.
15. In addition to being individual members of the HRCA by virtue of their ownership of

private property in Highlands Ranch, Plaintiffs Bell and Colquette are members of the board of directors of two of the subassociations within Highlands Ranch. Plaintiff Bell at the time of the filing of this Complaint serves as the President of the Board of Directors of the subassociation known as The Highwoods Homeowners Association, and Plaintiff Colquette serves as the President of the Board of Directors of the subassociation known as Weatherstone at Highlands Ranch Association, Inc.

16. Jurisdiction of this action is proper in this court pursuant to the Colorado Constitution, Article VI, §9(1).
17. Venue is proper in Douglas County pursuant to C.R.C.P. 98(a) and (c).

II. FACTUAL BACKGROUND

18. Pursuant to Section 5.19 of the Declaration, the HRCA has the power “to provide services to the Subassociations. Such services to any Subassociation shall be provided pursuant to an agreement in writing between [HRCA] and such Subassociation which shall provide for the payment by such Subassociation to [HRCA] of the reasonably estimated expenses of [HRCA] of providing such services to the Subassociation including a fair share of the overhead expenses of [HRCA]. Services which may be provided to a Subassociation may include, without limitation, (a) the construction, care, operation, management, maintenance, repair and replacement of improvements owned by the Subassociation; (b) the providing of Public Functions to the area covered by the Subassociation; (c) the enforcement of the provisions of any Supplemental Declaration for, on behalf of, and in the name of the Subassociation; (d) the collection of assessments for, in the name of, and on behalf of a Subassociation; (e) the payment of

taxes for a Subassociation with funds of the Subassociation; (f) the obtaining of insurance for a Subassociation; (g) the collection of charges for use of facilities of a Subassociation; and (h) the appointment and supervision of a Manager or Managers for a Subassociation.” *See Id* at Section 5.19, p. 20.

19. Upon information and belief, in 2006, the HRCA started to actively solicit and recruit homeowner subassociations for the HRCA to provide management services under Section 5.19. The HRCA entered into written management agreements to effectuate the same, eventually building a portfolio of business involving more than 20 homeowner subassociations.
20. The HRCA actively solicited Delegates to convince the subassociations to have the HRCA manage them.
21. The management responsibilities of the HRCA were created by and subject to written contracts with each subassociation, also known as management agreements.
22. From the inception of the program until late 2015, the Delegates were told by the HRCA that the management of the subassociations was a cash positive venture and was not a burden on the HRCA.
23. Upon information and belief, in late 2015 and early 2016, the majority of the then twenty-plus management agreements were set to expire.
24. During this time, the HRCA actively pursued renewal of the management agreements with each subassociation. Upon information and belief, the HRCA used the HindmanSanchez, P.C., its law firm, to review and approve these contracts. At the same time, HindmanSanchez represented at least one of the subassociations impacted

- by the renewed management agreements.
25. Upon information and belief, twenty of the subassociations renewed their management agreement with the HRCA.
 26. The HRCA actively pursued renewal of these contracts and in fact did renew these management agreements intending to package them up as a “portfolio” in order to sell them to a third party, without disclosing its intent to do so, to the detriment of each subassociation.
 27. The management agreements, pursuant to their express terms, could only be assigned by the HRCA with the prior written permission from the subassociation. An assignment in the absence of such consent was a breach of contract.
 28. Despite this binding contractual promise made by the HRCA to the subassociations, the HRCA entered into confidential negotiations with a private, for profit corporation (the "Buyer") to purchase the entire portfolio of management agreements for the financial benefit of the HRCA and to the detriment of many subassociations. The HRCA told no one of its negotiations with the Buyer or of its intent to abandon and assign its contracts, and published no public notice such that any of the 93 Delegates, 31,000 members, or any of the twenty affected subassociations would know of these dealings.
 29. On or about June 1, 2016, the HRCA, with no notice or discussion whatsoever with those that it was contractually bound to, or anyone else, and in breach of approximately 20 management agreements, entered into an Asset Purchase Agreement (“APA”) with the Buyer to sell and assign the subassociation management agreements.

30. As part of the APA, the HRCA assigned its rights and obligations under every subassociation management agreement to the Buyer and immediately breached every contract.
31. Upon information and belief, there was no competitive bid process to purchase the portfolio of management agreements and select a new management company.
32. The subassociations only learned about the assignment and “new” management company, the Buyer, after the assignments and APA were consummated.
33. By completing the sale as the subassociations were entering into the busy summer months, when landscaping and construction contracts were being performed, subassociations could no longer look to the HRCA to manage these programs. Rather than performing as a true assignee, the Buyer insisted that the subassociations sign addendums to the existing management agreements assigned to the Buyer, before management services would be continued or provided to them. This, in turn, resulted in significant delays in service and increased costs to the subassociations.
34. In many instances, given each subassociation’s inability to plan for the unexpected property management transition, the subassociations signed the addendum, with increased costs, in order to ensure that the day to day operations (such as collecting dues and maintaining the property) were not compromised, and to attempt to minimize the even greater damages that could result from additional delay of property management functions. In some instances, the subassociations refused to accept the services of the Buyer, and at least one subassociation signed the coerced management agreement under protest. These actions cost some individuals working for their

- subassociation as board members hundreds of hours of time to self-manage their subassociations until a new management company could be found and approved.
35. As a result of the actions of the HRCA, the Delegates formed a committee, the “Delegate Study Group Regarding Sale/Transfer of Property Management” (hereinafter “Delegate Committee”) to investigate the aspects of the sale, including its monetary aspects.
36. As part of this process, several of the Plaintiffs requested a copy of the APA and its related documents, which included loan documents.
37. Specifically, on June 28, 2016, Plaintiff Caswall, on behalf of the Delegate Committee, requested a copy of the APA and associated records. *See Exhibit 2.*
38. On July 7, 2016, the HRCA’s law firm, HindmanSanchez, responded to this request on behalf of the HRCA by producing a heavily redacted version of the APA, which was effectively non-informative in critical areas. A copy of the response and first produced and redacted APA is attached as **Exhibit 3**.
39. The nature of the extensive redactions precluded the Delegate Committee and all members of the HRCA community from understanding the merits and terms of the APA, including the sale price and any benefits of the same. *See, e.g., Id., APA at Section 2(b), p. 8-10.*
40. After objections to the redactions, HindmanSanchez sent Plaintiff Caswall a second redacted version of the APA. *See Exhibit 4 - July 27, 2016 E-mail from HindmanSanchez to Plaintiff Caswall with attached APA.*
41. This version included similar redactions, including the purchase price. *See, e.g., Id. at*

Section 2(b), p. 8-10.

42. The redactions in both versions precluded Plaintiffs and other HRCA members from discovering who the HRCA consulted regarding the sale, including who served as the transaction advisor. *See Exhibits 3 and 4*, APA at Section 5(s), p. 17.
43. Further, it precluded anybody from further assessing what, if any, potential conflicts of interest may have been involved.
44. Upon information and belief, HindmanSanchez served as both the HRCA's transaction adviser and legal counsel, while simultaneously continuing to serve as legal counsel for one or more subassociations whose management agreements were breached by the HRCA.
45. On July 29, 2016, a second request was made for an unredacted version of the APA along with copies of other associated records that had also been withheld from the initial access request. *See Exhibit 5*.
46. The second disclosure request also included a specific request for a copy of any contract, payment invoice and payment records or other documents identifying the transaction advisor. *See Id.*
47. On August 8, 2016, HindmanSanchez notified Plaintiff Caswall and the Delegate Committee that like the initial request, the request for access to an unredacted copy of the APA was denied, as was access to the records regarding the transaction advisor, including any payment records. *See Exhibit 6*.
48. Defendant continues to refuse to provide Plaintiffs and all other HRCA members with an unredacted copy of the APA and other financial records or contracts detailing or

regarding the sale of the subassociation management agreements, including loan documents under which the HRCA is financing the Buyer's purchase of the subassociation management agreements.

49. In so doing, Defendants have breached their duties to the members of the HRCA, including Plaintiffs.

III. FIRST CLAIM FOR RELIEF

50. Pursuant to C.R.S. § 38-33.3-317(1)(l), an “**association must maintain** the following, all of which shall be deemed to be the sole records of the association **for purposes of** document retention and **production to owners**:

...

(l) **Current written contracts** to which the association is a party and contracts for work performed for the association within the immediately preceding two years...”

(Emphasis added.)

51. The HRCA Bylaw Section 11.3, Books and Records, provides in relevant part that “[a]ll books and records of the Association . . . may be inspected by any Delegate or Member, or his agent or attorney . . . for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board of Directors requiring advance notice of inspection . . .” See **Exhibit 7** – Section 11.3 of the HRCA Bylaws.

52. Further, pursuant to C.R.S. § 38-33.3-209.5(1)(b)(V), the HRCA is required to maintain an inspection of records policy.

53. Pursuant to the HRCA's Inspection of Records policy, it must make available for inspection and copying “[c]urrent written contracts and contracts for work performed

for the Association within the prior two years...” See **Exhibit 8** - Inspection of Records Policy at 1.(t).

54. Plaintiffs seek declaratory relief, pursuant to the Colorado Uniform Declaratory Judgments Law, C.R.S. § 13-51-101, *et seq.*, and C.R.C.P. Rule 57, on the following point(s):

- a. Pursuant to C.R.S. §§ 38-33.3-317(1)(a), 38-33.3-317(1)(l), 38-33.3-317(2)(a), the HRCA Bylaws, and the HRCA Inspection of Records Policy, Plaintiffs are entitled to an unredacted copy of the APA, its exhibits, and attachments, including any and all loan documents;
- b. Pursuant to C.R.S. §§ 38-33.3-317(1)(a), 38-33.3-317(1)(l), 38-33.3-317(2)(a), the HRCA Bylaws, and the HRCA Inspection of Records Policy, Plaintiffs are entitled to any documents related to the transaction advisor for the sale of the subassociation management agreements.

55. In requesting this declaratory relief, Plaintiffs are requesting an interpretation of the rights, legal status and relationships of the parties under the above law and facts.

56. Such interpretation is appropriate under the provisions of the Uniform Declaratory Judgments Law and C.R.C.P. Rule 57.

57. Plaintiffs request that the Court declare that the Plaintiffs are entitled to be given the APA, its exhibits and attachments, including any and all loan documents, as well as all documents, emails, and writings of any kind that were prepared during the negotiation of the agreement, and all documents relating to the bidding process and loan given to the Buyer, and selection process, if any, that the HRCA undertook to assign the

management agreements it had with the subassociations and to award the management of the HRCA subassociations to the Buyer.

58. The Plaintiffs ask for further relief as contemplated by Rule 57(h) and C.R.S. § 13-51-112 by requesting that the Court order the production of these materials for inspection and copying by the Plaintiffs at Defendant's cost.

59. The declaratory judgment or decree, if rendered or entered, will terminate the uncertainty or controversy giving rise to this proceeding.

WHEREFORE, Plaintiffs request that the Court determine the rights, status or other legal relations of the parties under the law and facts of this case; for further relief as contemplated by C.R.S. § 13-51-112 and C.R.C.P. 57(h); for the recovery of their costs and attorney fees, pursuant to C.R.S. § 38-33.3-123(1); and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

LASATER & MARTIN, P.C.

/s/ Brian E. Martin

J. Scott Lasater

Brian E. Martin

Attorneys for Plaintiffs

In accordance with C.R.C.P. 121, §1-26(7), a printable copy of this document with electronic signatures is maintained by the filing party and is available for inspection by other parties or the Court upon request.