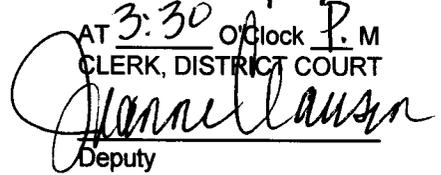


STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 12/3/19

AT 3:30 O'Clock P. M.
CLERK, DISTRICT COURT


Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**STEVE and JO ANN FRITSCH, GARY and
GINA PARKER, GLORIA GRESSMAN,
RICK and TERRI WOJAHN, and MARC
ZANDER,**

Plaintiffs,

vs.

**RIDGEVIEW DEVELOPMENT, LLC,
BLACKSTONE ESTATES
HOMEOWNERS' ASSOCIATION, LLC,
BLACKSTONE ESTATES HOMEOWNERS
ASSOCIATION, INC., BLACKSTONE
ESTATES WATER ASSOCIATION, INC.,
BRENT BALDWIN, SUE BALDWIN, DAN
TAYLOR, and CARLA TAYLOR,**

Defendants.

Case No. **CV28-19-4431**

**MEMORANDUM DECISION
AND ORDER DENYING
PLAINTIFFS' PETITION TO
RELEASE NONCONSENSUAL
COMMON LAW LIEN**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On June 17, 2019, plaintiffs, who are owners of five lots (Complaint 4, ¶¶ 19-23) within the Blackstone Estates Subdivision in Kootenai County, Idaho, filed this lawsuit against defendants Ridgeview Development LLC, Blackstone Estates Homeowners Association (LLC and Corporation), Blackstone Estates Water Association, Inc., Brent Baldwin, Sue Baldwin, Dan Taylor and Carla Taylor. Plaintiffs claim damages caused by defendants of "approximately, though possibly in excess of one million dollars (\$1,000,000.00)." Complaint, 21 (the Court notes plaintiffs' Complaint lacks page

numbers), ¶ a. Plaintiffs also seek an order requiring defendants to provide an accounting. *Id.* at b. The dispute is over a water system.

Plaintiffs claim the subdivision was created in 2006 through a Declaration of Covenants (Declaration), which was recorded on May 5, 2008, by the grantor, defendant Ridgeview Development LLC (Ridgeview). *Id.* at 3, ¶¶ 11, 13, 14. The subdivision consists of 12 single-family lots intended for construction of custom homes. *Id.* at ¶ 12. The Declaration was signed by the individual defendants the Baldwins and the Taylors as “manager members.” *Id.* at ¶ 15. Plaintiffs claim the Declaration required the creation of a non-profit corporation to serve as the homeowners association for the subdivision (*Id.* at 4, ¶ 24), and that Ridgeview, the Baldwins and the Taylors failed to properly incorporate or operate the non-profit homeowners association that was required. *Id.* at 5, ¶ 27. Plaintiffs also allege the Declaration required Ridgeview to install a functioning water system (*Id.* at ¶ 28), but that the Declaration did not anticipate the creation of a separate water association, but, instead, vests that responsibility to the homeowners association that Ridgeview represented had already been created, when it had not been created. *Id.* at ¶¶ 26, 27, 29, 30. Plaintiffs claim that on December 7, 2010, Ridgeview, the Baldwins and the Taylors executed and recorded the “Water System Rules and Regulations of Blackstone Water Association” and recorded such (*Id.* at 6, ¶ 32), although no entity called “Blackstone Water Association” existed. *Id.* at ¶ 33. Plaintiffs claim that in 2017, after pressure from the owners of lots within the subdivision, Ridgeview, the Baldwins and the Taylors caused the Blackstone Estates Water Association, Inc., and the Blackstone Estates Homeowners Association, Inc., to be created. *Id.* at ¶ 34. Plaintiffs claim the lot owners were not notified of the creation of Blackstone Estates Water Association, Inc., that the Declaration was not amended to account for its creation or operation, and that no

lot owners were given the opportunity to approve or opt into membership in that entity. *Id.* at ¶ 36. Plaintiffs claim Blackstone Estates Water Association, Inc., has attempted to impose and collect assessments from the plaintiffs and other lot owners, and that in August 2017, the water system ran out of water and that water had to be imported to the homes. *Id.* at ¶¶ 37, 38. Plaintiffs claim that in July 2018, the water system again ran out of water, that defendants told the lot owners a new well must be drilled and that the defendants attempted to assess plaintiffs and other lot owners for the cost of the new well. *Id.* at 7, ¶¶ 41-43. Finally, plaintiffs claim that none of them were advised when they purchased their lots that the water system had problems, or that the homeowners association entity had not been properly established and operated. *Id.* at ¶ 46.

Plaintiffs claim in Count I that defendants breached a covenant in the Declaration by failing to establish a nonprofit corporation homeowners association, by establishing a Water Association and assessing lot owners without amending the declaration. *Id.* 9-11, ¶¶ 49-65. Plaintiffs claim defendants misrepresented to the plaintiffs that a homeowners association had been created and that the water system was functional. *Id.* 11, 12, ¶¶ 66-76. Plaintiffs claim defendants were negligent. *Id.* 13, ¶¶ 77-80. Plaintiffs claim the defendants failed their duty to provide the lot owners with a functioning water system. *Id.* 14, 15, ¶¶ 81-89. Plaintiffs claim defendants breached their fiduciary obligation to the plaintiffs. *Id.* 16, ¶¶ 90-93. Plaintiffs claim defendants violated Kootenai County Development Code requirements. *Id.* 15-17, ¶¶ 94-111. Plaintiffs seek declaratory relief and an accounting. *Id.* 18-20, ¶¶ 112-125. Specifically, plaintiffs ask this Court to: declare that Blackstone Estates Water Association, Inc., has no authority over plaintiffs and no role within the administration or operation of the common areas or water system of Blackstone Estates Subdivision (*Id.* at 19, ¶ 120); declare Blackstone Estates

Homeowners Association, Inc., was improperly established and require that entity to hold an annual meeting to properly elect a Board of Directors to operate that entity in accordance with the Declaration and the properly adopted articles and bylaws. *Id.* at 20, ¶ 122.

On August 19, 2019, defendants filed their Answer. On October 9, 2019, this Court held a scheduling conference and, at the conclusion of which, set this case for a five-day court trial beginning August 10, 2020. October 11, 2019, Scheduling Order, Notice of Trial Setting and Initial Pretrial Order 1.

On October 29, 2019, plaintiffs filed Plaintiffs' Petition to Release Nonconsensual Common Law Lien, asking this Court to remove the nonconsensual common law liens filed against their properties on October 18, 2019, by defendant Blackstone Estates Water Association, Inc. Pls.' Pet. to Release Nonconsensual Common Law Lien 1. This is the motion which is currently at issue and under advisement. On November 19, 2019, defendants filed Defendant's (Blackstone Estates Water Association) Memorandum in Opposition to Plaintiffs' Petition to Release Nonconsensual Common Law Lien, and a Declaration of Scott L. Poorman Re: Memorandum in Opposition to Petition to Release Liens. On November 22, 2019, plaintiffs filed Plaintiffs' Reply to Defendant's Memorandum in Opposition to Plaintiffs' Petition to Release Nonconsensual Common Law Lien.

On November 12, 2019, defendant Ridgeview Development, LLC filed Defendant Ridgeview Development, LLC's Motion to Quash and Remove Lis Pendens filed and recorded by plaintiffs on June 19, 2019, against defendant's property. Def. Ridgeview Development, LLC's Mot. to Quash and Remove Lis Pendens 1, 6. On November 19, 2019, plaintiffs filed Plaintiffs' Opposition to Defendant Ridgeview Development, LLC's Motion to Quash and Remove Lis Pendens.

On November 26, 2019, this Court heard oral argument on both Plaintiffs' Petition to Release Nonconsensual Common Law Lien and Defendant Ridgeview Development, LLC's Motion to Quash and Remove Lis Pendens. At the conclusion of that hearing, this Court granted Defendant Ridgeview Development, LLC's Motion to Quash and Remove Lis Pendens, finding that the filing of the lis pendens by plaintiffs was improper under Idaho Code § 5-505. At the conclusion of that hearing, the Court took under advisement the Plaintiffs' Petition to Release Nonconsensual Common Law Lien.

II. STANDARD OF REVIEW.

At this juncture, the facts do not appear to be in significant dispute. The parties dispute the application of the applicable law to those facts. "This Court exercises free review over questions of statutory construction, 'which includes whether a statute provides for judicial review, and the standard of review to be applied if judicial review is available.'" *Ravenscroft v. Boise Cty.*, 154 Idaho 613,614, 301 P.3d 271,272 (2013) (citing *Gibson* at 751, 133 P.3d at 1216).

When review of a trial court's decision involves entwined questions of law and fact, we exercise free review over questions of law, and uphold factual findings supported by substantial and competent evidence. *Ada Co. Hwy. Dist. V. Total Success Investments, LLC*, 145 Idaho 360, 365, 179 P.3d 323, 328 (2008), citing *Marshall v. Blair*, 130 Idaho 675, 679, 946 P.2d 975, 979 (1997).

Because mixed questions of law and fact are primarily questions of law, this Court exercises free review. *Id.* 145 Idaho 807, 812, 186 P.3d 663, 668 (2008). *Allen v. Reynolds*, 145 Idaho 807, 812, 186 P.3d 663, 668 (2008) citing *The Highlands, Inc. v. Hosac*, 130 Idaho 67, 69, 936 P.2d 1309, 1311 (1997).

In articulating the proper standard of review for mixed questions of law and fact,

this Court will differentiate among the fact-finding, law-stating, and law-applying functions of the trial courts. *Staggie v. Idaho Falls Consol. Hosps.*, 110 Idaho 349, 351, 715 P.2d 1019, 1021 (Ct. App.1986). Appellate judges defer to findings of fact based upon substantial evidence, but they review freely the conclusions of law reached by stating legal rules or principles and applying them to the facts found. *Id.* Where there is conflicting evidence, it is the trial court's task to evaluate the credibility of the witnesses and to weigh the evidence presented. *Desfosses v. Desfosses*, 120 Idaho 354, 357, 815 P.2d 1094, 1097 (Ct. App. 1991). Over questions of law, we exercise free review. *Kawai Farms, Inc. v. Longstreet*, 121 Idaho 610,613,826 P.2d 1322, 1325 (1992); *Cole v. Kunzler*, 115 Idaho 552,555,768 P.2d 815,818 (Ct. App. 1982).

III. ANALYSIS

Plaintiffs claim the liens filed October 18, 2019, by defendant Blackstone Estates Water Association, Inc., are invalid and constitute improper nonconsensual common law liens under I.C. § 45-810. Pls.' Pet. to Release Nonconsensual Common Law Lien 2. (this Court notes the pages in this document are also, unnumbered) Idaho Code § 45-810 authorizes homeowners associations to record liens for unpaid assessments that are properly imposed against their members. Plaintiffs claim Blackstone Estates Water Association, Inc. is not a homeowners association as defined by I.C. § 45-810(6), and is not the association entity charged with the ownership, operation, or maintenance of the common improvements of the subdivision. *Id.* Plaintiffs claim the Declaration vests that responsibility with a different entity, Blackstone Estates Homeowners Association, Inc., which they claim has not been properly established or operated and which is not the entity seeking to collect and secure a debt from plaintiffs. *Id.* at 2, 3. Plaintiffs also claim that the rules of the Blackstone Estates Water Association, Inc., do not give that

entity the contractual authority to record liens on plaintiffs' properties under I.C. § 45-810. *Id.* at 3. Finally, plaintiffs claim the amounts claimed in the liens are unvalidated [sic]. *Id.* at 4. The Court notes that the liens on each of the five parcels owned by plaintiffs are in the amount of \$1,917.33. *Id.* Ex. A.

Defendant Blackstone Estates Water Association, Inc., claims that it owns and operates the private water system that serves the subdivision, and that it owns the water right issued by the Idaho Department of Water Resources. Def.'s Mem. in Opp'n to Plfs.' Pet. to Release Nonconsensual Common Law Lien 2, citing Decl. of Scott Poorman, ¶ 4, Ex. C. It claims the members of Blackstone Estates Water Association, Inc., are the owners of the platted lots in the subdivision. *Id.* at Ex. B, ¶ 2.1. It claims that in February 2019, it proposed and the members approved a special assessment to cover unanticipated and extraordinary expenses, and that on February 20, 2019, it mailed notices to each owner requesting payment of \$1,917.33 within 30 days, and that plaintiffs have failed to pay such special assessment. *Id.* at ¶ 5 Ex. D and ¶ 6 Ex. E. It claims I.C. § 45-810 allows a homeowners' association to record a lien for the reasonable costs incurred in the maintenance of common areas consisting of real property owned and maintained by the association, and that "homeowners' association" is defined in I.C. § 45-810(6) as any incorporated or unincorporated association:

- (a) In which membership is based upon owning or possessing an interest in real property; and
- (b) That has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members.

Def.'s Mem. in Opp'n to Plfs.' Pet. to Release Nonconsensual Common Law Lien 2-3.

Defendant Blackstone Estates Water Association, Inc., claims it is a homeowners' association under I.C. § 45-810(6) (*Id.* at 3, 4), that the recorded water system rules

and regulations of defendant Blackstone Estates Water Association, Inc., expressly authorize it to record assessment liens (*Id.* at 4, 5), that the special assessment amount it levied was valid and correct (*Id.* at 5), that it complied with all procedural requirements prior to recording the notice of assessment liens (*Id.* at 5, 6), and that thus, its liens are not nonconsensual common law liens. *Id.* at 6, 7. It notes that Idaho Code §45-811 prohibits the recording of nonconsensual common law liens, and defines those as:

- (1) For purposes of this section, "nonconsensual common law lien" means a lien that:
- (a) Is not provided for by a specific state or federal statute;
 - (b) does not depend upon the consent of the owner of the property affected for its existence;
 - (c) Is not a court-imposed equitable, judgment or constructive lien; and
 - (d) Is not of a kind commonly used in legitimate commercial transactions.

Id. at 6. It argues its liens do not meet that definition because it was authorized under I.C. §45-810 and its recorded bylaws, to record the liens it recorded. *Id.* It argues each property owner in the subdivision took title subject to the terms and provision in the original Water System Rules and Regulations of Blackstone Estates Water Association, Inc., first recorded on December 7, 2010. *Id.* It argues the liens it recorded are the type of instrument commonly used by homeowner associations and other cooperative nonprofit associations to enforce assessments levied against their members. *Id.* at 7. Finally, it argues plaintiffs have failed to offer any evidence to support their requested relief under I.C. §45-811.

The Court, at least at this point, is persuaded by the defendant Blackstone Estates Water Association, Inc.'s arguments which are supported by its evidence and by the law. While defendant Blackstone Estates Water Association, Inc., is not titled a "homeowners' association", it, at least at this point, appears to meet the requirements of

a “homeowners’ association” as defined in I.C. § 45-810(6) in that it clearly is an incorporated association in which membership is based upon owning or possessing an interest in real property; and it has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members. Plaintiffs take issue with the fact that defendant Blackstone Estates Water Association, Inc., was not formed at the time the subdivision was formed, that it is not titled a “homeowners association”, and that it is different and separate from the Blackstone Estates Homeowners’ Association, LLC. However, plaintiffs provide no legal argument as to that and this Court is unable at this point, to understand the significance of those facts as it relates to an assessment which occurred in 2019. At oral argument, counsel for plaintiffs noted the CC&R’s are the controlling instrument and that they have never been amended, but didn’t explain how that relates to an assessment which occurred in 2019. At oral argument, counsel for plaintiffs noted the entity Blackstone Estates Water Association, Inc. was not accounted for in the Declaration and that the Declaration hasn’t been amended to account for the entity Blackstone Estates Water Association, Inc. Again, plaintiffs haven’t explained the legal significance of those facts. This Court finds that the defendant Blackstone Estates Water Association, Inc.’s minutes of its January 23, 2019, special meeting, show a special assessment to cover unanticipated and extraordinary expenses totaling \$26,008.00 were discussed at that meeting, voted on and approved at that meeting. November 19, 2019, Declaration of Scott L. Poorman, 2, ¶5; Ex. D, 2, ¶C, ¶4. Defendant Blackstone Estates Water Association, Inc. claims Ridgeview development, LLC subsequently agreed to pay \$3,000 of those expenses (while no admissible evidence is provided for that claim, there is no reason for any of the defendants to lie about such claim), leaving \$23,008.00, to be divided by the 12 lots

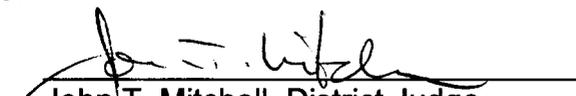
in the subdivision. Def.'s Mem. in Opp'n to Plfs.' Pet. to Release Nonconsensual Common Law Lien 5. This amounts to \$1,917.33 per lot as set forth in defendant Blackstone Estates Water Association, Inc. brief. *Id.* This amount is the amount of the special assessment on each lot. *Id.* at 2, citing Decl. of Scott Poorman, ¶ 5 Ex. D and ¶ 6 Ex. E.

IV. CONCLUSION AND ORDER.

For the reasons stated above, plaintiffs' Petition to Release Nonconsensual Common Law Lien must be denied, because the lien is not a nonconsensual common law lien as defined by Idaho Code §45-811.

IT IS HEREBY ORDERED plaintiffs' Petition to Release Nonconsensual Common Law Lien is DENIED.

Entered this 3rd day of December, 2019.

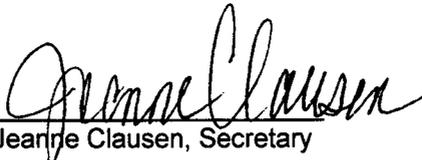

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 3rd day of December, 2019, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

Brindee L. Collins
6126 W. State Street
Boise, ID 83703
brindee@collinslawidaho.com ✓

Scott Poorman
320 E. Neider Ave., Ste 204
Coeur d'Alene, ID 83815
office@poormanlegal.com ✓

By 
Jeanne Clausen, Secretary