STATE OF IDAHO)
County of KOOTENAI)ss
FILED 12/03/2020
AT 1:50 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' MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on two Motions for Summary Judgement. The first was filed by the plaintiffs on November 2, 2020, as a Motion for Partial Summary Judgment. The second was filed by the defendants on November 16, 2020, as a Cross Motion for Summary Judgment. At oral argument, counsel for defendants agreed that their motion was also for partial summary judgment.

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), and that the Declaration did not anticipate the creation of a separate water association, but, instead, vested that responsibility to the homeowners association that Ridgeview represented had already been created, when it had not yet 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 of their Complaint 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 mispresented 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 November 2, 2020, the plaintiffs filed a Motion for Partial Summary Judgment, as well as a Memorandum in Support of Partial Summary Judgment and an Affidavit in Support of Summary Judgment. On November 16, 2020, defendants filed a Defendants' Cross Motion for Summary Judgment, a Memorandum in Support of Defendants' Cross Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Partial Summary Judgment, and a Declaration of Dan Taylor in Support of Defendants' Cross Motion for Summary Judgment. On November 23, 2020, plaintiffs filed a Reply Memorandum and Opposition to Defendants' Cross Motion for Summary Judgment as well as a Supplemental Affidavit of Counsel in Support of Plaintiffs' Partial Motion for Summary Judgment and Opposition to Defendants' Cross Motion for Summary Judgment (reply brief).

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 City,* 154 Idaho 613,614, 301 P.3d 271,272 (2013), see also *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). 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). 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).

III. ANALYSIS

A. Timeliness of defendants' cross motion for partial summary judgment.

First this Court must deal with the matter of timeliness in the filing of the

defendants' Cross Motion for Summary Judgment. As per this Court's October 11, 2019 Scheduling Order, "[m]otions for summary judgment shall be filed so as to be heard not later than **ninety-one (91) days (thirteen weeks) before Trial.**" Scheduling Order 2 (bold in original).

Pursuant to motions for summary judgment under Idaho Rule of Civil Procedure 56(b)(2), "[t]he motion, supporting documents and brief must be served at least 28 days before the date of the hearing". In this case, the trial date is set for March 8, 2021. This means that, in order to comply with the scheduling order and Rule 56(b)(2), the latest a party could file a motion for summary judgment is November 9, 2020. Defendant's Cross Motion for Summary Judgment was filed on November, 16, 2020, and is therefore, is untimely.

The defendants' briefing in response to the plaintiffs' motion for partial summary Judgment was timely filed. The issue is the significance of the defendants' untimely filing of their cross-motion for summary judgment. This Court has previously addressed this issue in *Jacklin Land Co. v. Blue Dog RV, Inc.*, Kootenai Co case No. 2009 WL 2199309 (June 15, 2009). In that case, this Court held:

> Jacklin objected to defendant's Cross-Motion for summary judgment as being untimely under I.R.C.P. 56. Affidavit of John Magnuson in Support of Plaintiff's Objection and Motion to Strike Defendants' Cross-motion for Summary Judgment, p. 5. Jacklin moves this Court to strike the cross-motion for summary judgment as it cannot now timely conduct additional discovery and meaningfully respond. *Id.* Defendants urge the Court to deny the motion to strike because its cross-motion addresses the same legal and factual issues as Jacklin's motion for summary judgment. Defendant's Reply Memorandum, pp. 2-3. Defendants state they could not prepare responsive briefing until after depositions could be taken in late January. *Id.*, p. 3.
>
> Idaho Rule of Civil Procedure 56(c) requires motions and affidavits for summary judgment and proceedings thereon to be filed 28 days before hearing, and responsive affidavits and answering briefs are to be served 14 days before hearing. "The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney's fees and sanctions against a

party, a party's attorney, or both." I.R.C.P. 56(c). The hearing on the motion for summary judgment was set for March 3, 2009. Jacklin filed its motion and memorandum in support on December 11, 2008. Defendants filed their cross-motion, memorandum in support, and motion to shorten time on February 17, 2009. It will be noted that defendants failed to ask permission from this Court's Deputy Clerk of Court (scheduling clerk) to add hearing on defendants' motions. On February 25, 2009, Jacklin filed an objection to the cross-motion and motion to shorten time, along with its Reply Memorandum in Support of Motion for Summary Judgment (addressing Defendants' cross-motion). Jacklin's reply memorandum is forty-two pages in length and thoroughly rebuts defendants' factual assertions. Reply Memorandum in Support of Motion for Summary Judgment, pp. 7-20.

Sanctions pursuant to I.R.C.P. 56 are a matter left to the Court's discretion as evidenced by the Rule's "may" language. Similarly, evidentiary rulings, such as ones on the motion to strike before the Court, are reviewed under an abuse of discretion standard. *Perry v. Magic Valley Reg'l. Med. Ctr.,* 134 Idaho 46, 50, 995 P.2d 816, 820 (2000). Where, as here, a party has time to respond and address the arguments in the opposing party's untimely filing, it is unlikely that they are prejudiced. I.R.C.P. 61 instructs the Court that, at every stage of a proceeding, the Court "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." I.R.C.P. 61; *See McClure Engineering, Inc. v. Channel 5 KIDA,* 143 Idaho 950, 155 P.3d 1189, 1194 (Ct. App. 2006). For example, the Court of Appeals has declined to reverse summary judgment merely because the summary judgment motion and supporting documents were not mailed to the opposing party at least thirty-one days in advance of the hearing as [then] required by I.R.C.P. 56(c). *Ponderosa Paint Mfg., Inc. v. Yack,* 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App. 1994). The Court of Appeals held that technical error did not require reversal because the appellants had not demonstrated whether, if given additional time, they could have submitted evidence or legal argument that would have prevented summary judgment against them. *Id.* The only party arguably prejudiced here is the Court, who received Jacklin's objection on February 26, 2009, and Defendants' Reply Memorandum on March 2, 2009. This Court denied the objection and motion to strike brought by Jacklin on the record on March 3, 2009.

Jacklin, Memorandum Decision and Order on Cross-Motions for Summary Judgment 4-6. This Court finds no substantial right of the plaintiffs have been affected by defendants' untimely filing of their cross-motion for summary judgment. The same or similar issues are presented in each motion for partial summary judgment.

Plaintiffs request that this Court grant partial summary judgment declaring that

(1) "the Declaration is valid and legally enforceable"; (2) "the Declaration governs in Blackstone Estates Subdivision and its plain terms must be complied with and not contradicted"; (3) "[t]he Water System Rules and Regulations and the Bylaws for the water association entities are outside the Declaration's terms, and cannot be used to determine the parties' rights in this matter"; and (4) "[t]he Defendant Water Association's existence and its actions are in direct and irreconcilable conflict with the unambiguous terms of the Declaration, and it has no right ... to manage any part of the common areas or to seek involuntary contributions from Plaintiffs." Pls.' Mot. for Partial Summ. J. 10,12,15,18.

The defendants ask this Court to grant summary judgment declaring:

> On the undisputed record now before the court, the Water Association requests summary judgment declaring that the First Amendment to the Water System Rules and Regulations was validly approved and adopted by the Water Association, that amendment is binding and enforceable against all lots within Blackstone Estates, and that the special assessment levied by the Water Association in February of 2019 was a valid exercise of the Water Association's authority as the owner and manager of the water system.

Defs'. Mem. on Cross Mot. for Summ. J. 19.

The defendants have requested summary judgment on the major issues surrounding this case, but it does not appear that a ruling in favor of the defendants' request for summary judgment would dispose of all of the causes of action raised by the plaintiffs' Complaint. For this reason, this Court is treating the defendants' cross motion as a motion for partial summary judgment. Plaintiffs recognize that the defendants' cross motion largely relates to the same facts and legal issues as their own Motion for Summary Judgment, but objects to the "new factual and legal arguments that are included by Defendants" on the grounds of prejudice due to untimeliness of the defendants' cross motion. Reply 2. Plaintiffs do state that "[n]otwithstanding these

issues, Plaintiffs are prepared to address and oppose the substantive matters in the Motion and Cross-Motion, and do so herein, to the extent they have had timely opportunity to do so." *Id.* Plaintiffs have filed a 16 page Reply brief, and this Court does not find the plaintiffs are prejudiced by the untimely filing of the defendants Cross Motion. This Court will therefore rule upon the defendants' Cross Motion for Summary Judgment on its merits.

B. Merits of the summary judgment motions.

First, the plaintiffs ask this Court to rule on their Motion for Partial Summary Judgment declaring that, "the Declaration is valid and legally enforceable". Pls.' Mot. for Partial Summ. J. 10. The plaintiffs argue that:

> The Declaration is undisputedly enforceable — it was drafted and recorded by Defendant Ridgeview and signed by the Individual Defendants. No facts have been or can be alleged that would genuinely dispute its existence or legal force. By its own terms, the restrictive covenants in the Declaration are meant to bind all parties with an interest in the Blackstone Estates Subdivision, in perpetuity. The Plaintiffs are entitled to judgment as a matter of law that the Declaration is valid and legally enforceable.

Id. at 11. Defendants argue that:

> As argued by the plaintiffs, these provisions of the CCRs are clear and unambiguous, and are binding and enforceable against all parties with any interest in the Blackstone Estates subdivision. And it was through the authority granted and reserved by these provisions that Ridgeview Development, LLC adopted and recorded Amendment #1 to the CCRs and the Water System Rules and Regulations of Blackstone Estates on December 7, 2010; before any lot in the subdivision had been conveyed to any third party.

Defs.' Mem. for Cross Mot. on Summ. J. 11.

This Court finds that the plaintiffs' first request for partial summary judgment declaring that "the Declaration is valid and legally enforceable", while true, is largely circular and meaningless to this case. Defendants agree that the Declaration is valid and legally enforceable, but such a statement says nothing of the actual contested

notion that Amendment #1 and the Water System Rules and Regulations of Blackstone Estates is equally valid and legally enforceable. Ultimately, it is unclear what the plaintiffs are asking this Court to rule on regarding this request for partial summary judgment, and this Court will not rule on such an obvious tautological argument.

Idaho Rule of Civil Procedure 56(f) reads, "If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case." As shown above, the plaintiffs' request for partial summary judgment declaring that "the Declaration is valid and legally enforceable" is a statement that is not genuinely in dispute and is inconsequential to the issues pertinent to the case, and this Court treats such a statement as established in this case.

Next, the plaintiffs ask this Court to rule on a motion for partial summary judgment declaring that, "the Declaration governs in Blackstone Estates Subdivision and its plain terms must be complied with and not contradicted". Pls.' Mem. in Supp. of Mot. for Partial Summ. J. 12. Plaintiffs argue that:

> Plaintiffs' properties and the other lots within the Subdivision are be [sic] subject to the restrictive covenants found in the Declaration, and only those restrictions which are "clearly expressed" should be upheld by this Court. *Adams v. Kimberly One Townhouse Owner 's Association, Inc.*, 352 P.3d 492, 495 (Idaho 2015). Restrictive covenants which are not clearly expressed "must be resolved in favor of the free use of land." *Id.* Accordingly, Plaintiffs' properties are only subject to those restrictive covenants that are clearly expressed in the Declaration's plain terms or that otherwise comply with those terms. The consideration of any other documents, including the Water System Rules and Regulations, or the bylaws of the various entities at play in the case, must occur only within the lens of the Declaration's terms. These other documents are subordinate to the Declaration, and must either complement or comply with its terms.

Id. at 13. Similar to the plaintiffs' first request, the plaintiffs' second request for partial summary judgment declaring that, "the Declaration governs in Blackstone Estates

Subdivision and its plain terms must be complied with and not contradicted" is circular and meaningless to the issues contested. As shown above, the defendants agree that the Declaration is clear and unambiguous, and are binding and enforceable against all parties with any interest in the Blackstone Estates subdivision. Defs.' Mem. for Cross Mot. on Summ. J. 10. Again, the issue to be resolved by this case is whether Amendment #1 to the CCRs and the Water System Rules and Regulations of Blackstone Estates are valid and therefore must be complied with along with the Declaration.

For these reasons, this Court declines to rule on the plaintiffs' second request for partial summary judgment and instead finds that the plaintiffs' request for partial summary judgment, declaring that, "the Declaration governs in Blackstone Estates Subdivision and its plain terms must be complied with and not contradicted" is a statement that is not genuinely in dispute and is inconsequential to the issues pertinent to this case, and this Court treats such a statement as established in this case.

Next, plaintiffs request this Court rule on a motion for partial summary judgment Declaring that "[t]he Water System Rules and Regulations and the Bylaws for the water association entities are outside the Declaration's terms, and cannot be used to determine the parties' rights in this matter" and "[t]he Defendant Water Association's existence and its actions are in direct and irreconcilable conflict with the unambiguous terms of the Declaration, and it has no right ... to manage any part of the common areas or to seek involuntary contributions from Plaintiffs." Pls.' Mem. in Supp. of Mot. for Partial Summ. J. 16, 20. Plaintiffs argue that:

> The Water System Rules and Regulations and the Bylaws for the Water Association simply cannot be reconciled with the earlier recorded and legally binding Declaration.
>
> The Declaration, at Section 4.01 (f), does allow the Board of Directors *of the Homeowners Association*, to "develop[] rules and

> regulations for customers' usage of the Water System including but not limited to establishment of a list of approved meters and maximum usage of water per lot per day First Fritsch Aff., 114, Exh. A, Section 4.01 (f). However, this authority cannot reasonably be expanded to apply to the recordation of the Water System Rules and Regulations as they were drafted, with accompanying Bylaws for an entity not allowed for by the Declaration. The Water System Rules directly controvert the Declaration in a number of ways, including in vote allocation, membership rights, and enforcement rights, and are therefore invalid. See Exhibits D, F, and A to the First Fritsch Aff.

Id. at 14 (italics in original).

> Plaintiffs, as owners of lots within Blackstone Estates Subdivision, are entitled as a matter of law to the rights and privileges that are included in the Declaration, free from "fundamental change" that is not made in accordance with the Declaration's terms. The Water System Rules and Regulations and the Bylaws for the water association entities are outside the Declaration's terms, and cannot be used to determine the parties' rights in this matter.

Id. at 16.

> The Declaration in this matter is not ambiguous and is quite explicit on this matter. The developers of the Blackstone Estates Subdivision, in recording the Declaration, represented that a homeowners association had been created, and that such entity alone was to be vested with the responsibility and the power to operate and maintain the entirety of the development's common property and improvements, specifically including the water system.

Id. at 20.

Defendants argue that "[t]he Water System Rules and Regulations are a valid and enforceable amendment and supplement to the CCRs." Defs.' Mem. on Mot. for Cross Summ. J. 9. Defendants assert that the claims made by the plaintiffs regarding the unenforceability of the Water System Rules and Regulations as an amendment or supplement to the CCRs is without merit and that "these claims simply ignore the undisputed facts and the express language of the CCRs." *Id.* Defendants go on to argue that the Blackstone Estates Water Association was identified "as the entity responsible for providing water for domestic use and fire suppression on the Blackstone

Eatates Subdivision", and, its successors could be assigned any rights under the CCRs. *Id.* at 9-10.

The defendants assert that "Article IV of the CCRs gives the Association the authority and duty to own, maintain and repair the water system serving Blackstone Estates. *Id.* at 10. Critically, defendants assert that:

> This Authority expressly includes, "... development of rules and regulations for customers' usage of the Water System including but not limited to establishment of a list of approved meters and maximum usage of water per lot per day..."

Id.

Defendants argue that "Section 17.05 of the CCRs expressly authorizes amendments to the CCRs" and "[t]he Water System Rules and Regulations are - rules and regulations specific to the administration and operation of the water system. They clearly supplement the CCRs because the CCRs contain very few details or provisions regarding the operation and management of the water system." *Id.* at 15.

Finally, defendants argue that:

> As noted above, the Blackstone Estates Water Association was contemplated and expressly referenced by Ridgeview Development before the subdivision was approved and platted. The CCRs make direct reference to a "Water Company" providing water service to the subdivision, and specifically including the Association's Water System. The record shows that Ridgeview Development elected to create a separate Idaho nonprofit corporation to own, operate and manage the water system, and Ridgeview Development has assigned, transferred and conveyed all of its interest in the water rights and water system to the Blackstone Estates Water Association. This assignment and transfer was authorized by the CCRs and the amendments adopted and recorded by Ridgeview Development while it still owned all of the lots in the subdivision.

Id. at 15-16.

In the plaintiffs' Reply brief, plaintiffs concede the defendants' argument that since the defendants "owned all of the Lots within the Subdivision at the time they

recorded the Water System Rules and Regulations ... they had the unfettered right to amend the terms of the Declaration." Reply 3. The plaintiffs argue that:

> In accordance with the terms of the Declaration, they did have that right, and chose to exercise it in executing the First and Second Amendments to the Declaration. However, Blackstone Estates Subdivision and its lots were originally created and bound by the Plat Map for Blackstone Estates, executed on March 25, 2008, and recorded on Page 147, Book K of Plats for Kootenai County... While the developers of a subdivision might retain the unilateral right to amend the restrictive covenants for a subdivision after their recordation, they have no such right to amend the plat at their whim.

Id. at 3-4.

Plaintiffs go on to argue that:

> Once the Plat Map was executed and recorded, its terms could only be amended or vacated with the approval of the County Commissioners, in accordance with I.C.A. 50-1306A and Kootenai County Code Section 8.6.401. Kootenai County Code, at Section 8.6.401(B), requires that any "substantial changes" to a plat be approved via the subdivision plat approval process. "Substantial changes" are defined as:
>
> > I. Changes that would affect the location of roads, driveway approaches, septic systems, building sites, easements or utilities, unless all affected property owners have consented to the changes proposed;
> > 2. Changes that would create additional lots;
> > 3. Changes that would affect more than four (4) lots; or
> > 4. Other significant changes in wording that may affect vested rights of any owners of property, or of any legal interest in property, located within the subdivision.
>
> It is apparent that the Water System Rules and Regulations, the Water Association's ownership of the water rights, water system, and associated Common areas, and the management regime described and maintained by Defendants, all directly contradict the terms of the Plat Map. These are "significant changes" that affect the vested rights of all owners of property within the subdivision, and, since they purport to apply to the entire subdivision, they certainly affect more than four Lots. The Plat Map clearly states that the water is to be supplied by the Blackstone Estates Homeowners Association, that the subdivision is governed by the terms of the Declaration and the "requirements of the Blackstone Estates Homeowners Association," and it contemplates no other entity to operate, own, or maintain the water system or the other common areas and facilities in the Subdivision. Defendants['] actions violated the terms of the Plat Map, and there is no evidence that the Plat Map was properly

> amended as Idaho law and County Code require. Supplemental Affidavit of Counsel, 113.
>
> The ownership and management regime that is currently being exercised and supported by Defendants directly contradicts the dedication language in the Plat Map, and cannot stand. There is no admissible evidence that can contradict the plain language on the face of the Plat and Defendants cannot prove that it has been validly amended. Defendants[']' original intentions, as they are now being asserted by Defendants, were not stated or manifested in the Plat Map, and it has never been properly amended. For this reason alone, Plaintiffs are entitled to judgment as a matter of law that only the Blackstone Estates Homeowners Association, Inc. is authorized to own, operate, maintain, charge assessments for, or otherwise control the water system and associated facilities, in accordance with the Plat and the original Declaration.

Id. at 4-6.

In the plaintiffs' Reply brief, the plaintiffs also make arguments that the defendants have made admissions during discovery that the Declaration was not amended to account for the creation of the Water Association; the declaration is not ambiguous; the Water Associations' rules are invalid because the Water Association did not exist at the time the rules were executed and recorded; the validity of the Water System rules and regulations is not reasonably supported by admissible evidence; the recording of the Water Systems' rules and regulations does not cure their defects; and plaintiffs do not have to show harm in order to be entitled to the relief they seek. *Id.* at 5-13. None of these arguments are dispositive as to the motions for summary judgment before this Court.

The Issue this Court must decide upon regarding the Motions for Summary Judgment is whether the terms of the Plat Map "could only be amended or vacated with the approval of the County Commissioners, in accordance with I.C.A. 50-1306A and Kootenai County Code Section 8.6.401", and whether such an amendment of the Plat Map is necessary in order for Amendment #1 to the CCRs and the Water System Rules and Regulations of Blackstone Estates are valid and therefore must be complied with.

The Plat Map reads, in pertinent part, that:

> TRACTS A,B,C SHALL BE DEEDED TO BLACKSTONE ESTATES HOMEOWNERS ASSOCIATION FOR A PERPETUAL CONSERVATION EASEMENT GRANTED TO THE THREE LAKES CONSERVATION GROUP, INC.
>
> EASMENT SHALL BE DEEDED TO THE BLACKSTONE ESTATES HOMEOWNERS ASSOCIATION FOR THE PURPOSE OF DOMESTIC WATER WELLS AND RESERVOIR, AS SHOWN ON THE FACE OF THE PLAT.
>
> WATER TO BE PROVIDED BY BLACKSTONE HOME OWNERS ASSOCIATION.

Supplemental Aff. of Counsel in Supp. of Pls.' Partial Mot. for Summ. J. Ex. A, page 7.

In this case, this Court is not persuaded by the plaintiffs' argument that the Plat Map must be vacated or amended, under the process described in I.C.A. 50-1306A and Kootenai County Code Section 8.6.401, in order for Amendment #1 to the CCRs and the Water System Rules and Regulations of Blackstone Estates to be valid. As described in the Plat Map, the Easement is deeded to the Blackstone Estates Homeowners Association, and water is to be provided by the Blackstone Estate Homeowners Association. *Id.* As conceded by the plaintiffs, the defendants had the unfettered right to amend the Declaration. Reply 3. The defendants did in fact amend the declaration on December 8, 2010, and recorded the amendment along with the Water System Rules and Regulations before any lot in the subdivision had been conveyed to any third party. Compl. Ex. B pages 93-96.

Kootenai County Code Section 8.6.401 only requires substantial changes to a Plat Map to be approved "via the major subdivision, minor subdivision, or condominium plat approval process." Substantial changes are defined as:

> 1. Changes that would affect the location of private roads, common driveways, driveway approaches, septic systems, building sites, easements or utilities, unless all affected property owners have consented to the changes proposed, in which case the provisions of section 8.6.405 of this article shall apply;
> 2. Changes that would affect the location of public roads;
> 3. Changes that would create additional lots; or

4. Other significant changes in wording that may affect vested rights of any owners of property, or of any legal interest in property, located within the subdivision. (Ord. 546, 10-22-19)

This Court finds that none of these instances apply to the present case. The Fourth scenario is the only instance that approaches applicability in this case, but since none of the property was conveyed prior to the amendment of the Declaration, there were no vested rights of any owners.

IV. CONCLUSION AND ORDER.

As mentioned above, the facts do not appear to be in significant dispute. The parties dispute the application of the law to those facts. For the reasons described above, the plaintiffs' motion for partial summary judgment asking this Court to find that: "[t]he Water System Rules and Regulations and the Bylaws for the water association entities are outside the Declaration's terms, and cannot be used to determine the parties' rights in this matter", and "[t]he Defendant Water Association's existence and its actions are in direct and irreconcilable conflict with the unambiguous terms of the Declaration, and it has no right ... to manage any part of the common areas or to seek involuntary contributions from Plaintiffs" are denied.

For the reasons described above, the defendants Cross Motion for Summary Judgment asking this Court to find "that that the First Amendment to the Water System Rules and Regulations was validly approved and adopted by the Water Association, that amendment is binding and enforceable against all lots within Blackstone Estates, and that the special assessment levied by the Water Association in February of 2019 was a valid exercise of the Water Association's authority as the owner and manager of the water system," is granted.

IT IS HEREBY ORDERED plaintiffs' Motion for Partial Summary Judgment is DENIED.

IT IS FURTHER ORDERED defendants' Cross Motion for (partial) Summary Judgment is GRANTED.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 3rd day of December, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by email, interoffice mail or facsimile to each of the following:

Lawyer	Email	Lawyer	Fax #
Scott Poorman	office@poormanlegal.com ✓	Brindee Collins	brindee@collinslawlawidaho.com ✓

Jeanne Clausen, Deputy Clerk