

THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF CIBOLA
STATE OF NEW MEXICO

ADAM PEHRSON,

Plaintiff,

vs.

No. D-1333-CV-2024-00349

TIMBERLAKE RANCH LANDOWNERS
ASSOCIATION, a New Mexico
Non-profit Corporation; THE BOARD OF DIRECTORS
FOR THE TIMBERLAKE RANCH LANDOWNERS
ASSOCIATION, individually and in their capacity
as Board Members of the Timberlake Ranch Landowners
Association.

Defendants.

ACCEPTANCE OF SERVICE

The undersigned hereby acknowledges receipt of the 30-day Summons, and the Verified Complaint for Breach of Fiduciary Duties, Award for Attorney Fees, and Application for Injunction in the above-referenced matter, and accepts service thereof on behalf of the Defendants TIMBERLAKE RANCH LANDOWNERS ASSOCIATION, a New Mexico Non-profit Corporation and THE BOARD OF DIRECTORS FOR THE TIMBERLAKE RANCH LANDOWNERS ASSOCIATION, on this ____ day of _____, 20____.

HAYS & FRIEDMAN, P.A.

By _____
Gary Friedman
530-B Harkle Rd.
Santa Fe, New Mexico 87505
(505) 982-9559
Attorney for Defendants

THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF CIBOLA
STATE OF NEW MEXICO

FILED
13th JUDICIAL DISTRICT COURT
Cibola County
12/19/2024 3:50 PM
Toinette Garcia
CLERK OF THE COURT
Veronica Molina

ADAM PEHRSON,

Plaintiff,

VS.

No. D-1333-CV-2024-00349

TIMBERLAKE RANCH LANDOWNERS
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Non-profit Corporation; THE BOARD OF DIRECTORS
FOR THE TIMBERLAKE RANCH LANDOWNERS
ASSOCIATION, individually and in their capacity
as Board Members of the Timberlake Ranch Landowners
Association.

Defendants.

**VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTIES, AWARD FOR
ATTORNEY FEES, AND APPLICATION FOR INJUNCTION**

COMES NOW, Plaintiff, ADAM PEHRSON, by and through his undersigned counsel, and
for his Verified Complaint for Breach of Fiduciary Duties, Award for Attorney Fees, and Application
for Injunction states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Adam Pehrson ("Mr. Pehrson") is a New Mexico resident.
2. Upon information and belief, Defendant, Timberlake Ranch Landowners Association (the "Association") is a New Mexico non-profit corporation incorporated in the State of New Mexico.
3. The Association has the capability to sue and be sued. *See* NMSA 1978, §53-8-5.
4. The property at issue in this lawsuit is located in Cibola County, New Mexico.
5. Jurisdiction is proper in this Court.

6. Venue is proper in this Court because the property at issue is located within Cibola County.

GENERAL ALLEGATIONS

7. Upon information and belief, the Association was formed in 1986.

8. Upon information and belief, the Association covers a wide range of real property located in both McKinley County and Cibola County.

9. Mr. Pehrson owns real property located within the boundaries of the Association.

10. The Association has land use restrictions associated with the real property within its boundaries.

11. The Association amended its Declaration of Covenants, Conditions and Restrictions on or about July 20, 2019 (the "CC&Rs"), hereto attached as **Exhibit 1**.

12. These land use restrictions are found within the CC&Rs of the Association. *See Exhibit 1.*

13. The Association has the power to administer and enforce the CC&Rs and prevent any violation of the CC&Rs. *See Exhibit 1.*

14. The Association adopted Amended Bylaws on or about November, 2007 (the "Bylaws"). *See Bylaws of the Association hereto attached as Exhibit 2.*

15. The Bylaws state that the Association has the responsibility to administer and enforce the respective CC&Rs. *See Exhibit 2.*

16. Mr. Pehrson delivered multiple complaints to the Association and the Board of Directors for the Association detailing multiple violations of the CC&Rs. *See Complaints, hereto attached as Exhibit 3.*

17. Defendants did not correct these issues.

18. Upon information and belief, Defendants joked about the complaints rather than taking them seriously.

19. Additionally, the CC&Rs state that “all lots in Timberlake Ranch shall be used exclusively for private, single-family purposes and no other use unless expressly permitted under this Declaration.” *See Exhibit 1.*

20. Upon information and belief, Defendants have allowed some lot owners within the boundaries of the Association to use their lots as over-night rentals, in direct violation of the CC&Rs.

21. On the other hand, Defendants have refused to allow other lot owners the same opportunity.

22. Upon information and belief, Defendants pick and choose which CC&Rs they decide to enforce and against who to enforce them against.

23. Upon information and belief, Defendants have engaged in conduct which is a direct violation of the fiduciary duties owed to the Association as detailed in NMSA 1978, §53-8-25.1.

COUNT 1: BREACH OF FIDUCIARY DUTIES AGAINST THE ASSOCIATION

24. Plaintiff re-alleges and re-incorporates the preceding paragraphs as if fully alleged herein.

25. New Mexico Statutes list duties that an association owes to its members. *See* NMSA 1978, §47-16-6.

26. The Association shall exercise any powers conferred to the Association in the Community Documents. *See* NMSA 1978, §47-16-6.

27. The governing documents for the Association also list duties the Association owes to its members. *See Exhibit 1; see also Exhibit 2.*

28. The Association has breached these duties by failing to enforce the CC&Rs and other governing documents of the Association, even after receiving complaints by Mr. Pehrson.

29. Mr. Pehrson has been harmed by the Associations refusal to enforce the governing documents.

30. The Associations actions in refusing to enforce the CC&Rs constitute willful misconduct and recklessness.

31. As a result, Mr. Pehrson is entitled to damages.

**COUNT 2: BREACH OF FIDUCIARY DUTIES AGAINST THE BOARD OF
DIRECTORS INDIVIDUALLY AND IN THEIR CAPCITY AS BOARD
MEMBERS OF THE ASSOCIATION**

32. Plaintiff re-alleges and re-incorporates the preceding paragraphs as if fully alleged herein.

33. The Board of Directors for the Association owe duties to the members. *See* NMSA 1978, §47-16-7.

34. The Board of Directors act on behalf of the Association and the Board of Directors shall manage the affairs of the corporation. *See* NMSA 1978, §47-16-7; *see also* NMSA 1978, §53-8-17.

35. The Board of Directors shall perform their duties in good faith, in a manner the director believes to be in or not opposed to the best interest of the corporation and with such care as an ordinary prudent person would use under similar circumstances in a like position. *See* NMSA 1978 §53-8-25.1.

36. A Director is personally liable for breaches of the fiduciary duties when the director fails to adhere to the duties listed in NMSA 1978, §53-8-25.1 and the breach of failure to perform constitutes willful misconduct or recklessness. *See* NMSA 1978, §53-8-25.2; *see also* **Exhibit 2**.

37. Upon information and belief, Defendants, collectively, have breached these duties by failing to enforce the CC&Rs in accordance with the governing documents of the Association.

38. Mr. Pehrson has made various complaints, noting issues and noncompliance with the CC&Rs within the boundaries of the Association.

39. Upon information and belief, rather than correcting these issues, Defendants have made a mockery of the complaints by Mr. Pehrson.

40. Upon information and belief, the Defendants have allowed lot owners within the boundaries of the Association to intentionally violate the governing documents of the Association.

41. Upon information and belief, Defendants pick and choose which CC&Rs they decide to enforce, and against whom to enforce them.

42. Defendants' actions in refusing to fairly enforce the CC&Rs constitute willful misconduct and recklessness.

43. Mr. Pehrson has been harmed by Defendants' refusal to enforce the governing documents.

44. Defendants are personally liable.

COUNT 3: AWARD OF ATTORNEY FEES

45. Plaintiff re-alleges and re-incorporates the preceding paragraphs as if fully alleged herein.

46. The governing documents of the association allow Mr. Pehrson to recover his attorney fees and costs associated with this matter. *See Exhibit 1.*

47. Additionally, the Homeowners Association Act also allows Mr. Pehrson to recover his attorney fees. *See NMSA 1978, §47-16-14.*

48. Mr. Pehrson has attempted, through many different meetings and negotiations, to resolve these issues, but to no avail.

49. Defendants, collectively, refuse to adhere to the governing documents and enforce the CC&Rs in a fair and consistent manner, choosing which CC&Rs to enforce and against whom to enforce them.

50. As a result of Defendants' conduct, Mr. Pehrson was forced to bring this action.

51. As such, Mr. Pehrson is entitled to an award of Attorney fees.

COUNT 4: APPLICATION FOR INJUNCTION

52. Plaintiff re-alleges and re-incorporates the preceding paragraphs as if fully alleged herein.

53. The governing documents detail various CC&Rs that lot owners within the Association are required to follow.

54. It is the duty of the Association and Defendants to enforce those CC&Rs and to ensure compliance with the governing documents.

55. Mr. Pehrson seeks an injunction from this Court requiring Defendants to enforce and adhere to the governing documents of the Association.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

- A. An Order requiring Defendants to enforce and adhere to the Governing Documents of the Association;
- B. An award of damages in an amount to be proven at trial;
- C. An award of pre- and post-judgment interest;
- D. An award of punitive damages;

- E. An award to Plaintiff for his court costs and attorney fees; and
- F. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

ROSEBROUGH, FOWLES & FOUTZ P.C.

By: 

McKade R. Loe

Attorney for Plaintiff

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P. O. Box 1027

Gallup, New Mexico 87305-1027

(505) 722-9121

mckade@rf-lawfirm.com

VERIFICATION

STATE OF NEW MEXICO)
COUNTY OF Bernalillo) ss.

Plaintiff ADAM PEHRSON, being first duly sworn upon oath, states that he has reviewed the foregoing Verified Complaint for Breach of Fiduciary Duties, Award of Attorney Fees and Application for Injunction and that the facts and allegations contained therein are true and correct to the best of his knowledge, information, and belief.

Adam Pehrson
ADAM PEHRSON

SUBSCRIBED AND SWORN TO before me this 19th day of December, 2024 by
ADAM PEHRSON.

Notary Public

STATE OF NEW MEXICO
NOTARY PUBLIC
Trinity Lanae Nervaiz
Commission No. 1138427
July 25, 2028