

STATE OF NEW HAMPSHIRE

CARROLL, SS

SUPERIOR COURT

DEBORAH A. CANTY
and
MICHAEL A. HOWLETT

v.

PROPERTY OWNERS ASSOCIATION AT SUISSEVALE, INC.

Docket No: _____

**COMPLAINT
FOR ACCOUNTING**

1. Deborah A. Canty ("Canty") and Michael A. Howlett ("Howlett") (collectively, "Plaintiffs") complain against Property Owners Association at Suissevale, Inc. ("Suissevale").

2. Suissevale is a private community of more than 400 homes situated on Lake Winnepesaukee in Moultonborough, N.H.

3. Plaintiffs are property owners in and members of Suissevale.

4. Suissevale has refused to provide Plaintiffs with access to and an accounting of certain of its governing, managing, financing and operating documents.

5. Consequently, Plaintiffs are unable to ascertain their rights and liabilities as property owners in and members of Suissevale.

PARTIES

6. Canty and Howlett are a married couple owning two properties located in Suissevale including one at 27 Zermatt Street, Moultonborough, NH 03254.

7. Suissevale is a domestic non-profit corporation with a principal office address of 17 Langdorf Street, Moultonborough, NH 03254.

JURISDICTION AND VENUE

8. The Court has jurisdiction pursuant to RSA 491:7.
9. Venue is proper in Carrol County pursuant to RSA 507:9.

FACTS

10. Suissevale is a voluntary corporation organized under Chapter 292 of the New Hampshire Revised Statutes.

11. Suissevale is governed by its Articles of Agreement (“AoA”) and By-Laws.

12. In accordance with its AoA and By-Laws, Suissevale’s Board of Directors and Executive Committee manage its affairs on behalf of all of its property owners and members.

13. Suissevale purports to have a policy and/or procedure for its property owners and/or members to request review of and/or access to its documents.

14. Suissevale has not provided Plaintiffs with or made available to them its policy and/or procedure for requesting such documents.

15. In order to ascertain their rights and liabilities as property owners in and members of Suissevale, Plaintiffs requested access to and an accounting of certain of Suissevale’s governing, managing, financing and operating documents from 2010 through present including:

A. The water source project including funds expended, contracts, invoices and written materials from engineering, legal, financial, environmental and real estate firms;

B. The agreement and work orders with Leone McDonald & Roberts for the 2014 audit review as well as all work product and invoices;

C. All Symmetry Partners investment reports and statements since their engagement;

- D. All board of director minutes regarding investments and investment changes including all finance committee work product;
 - E. Certificates of insurance for all Suissevale coverages;
 - F. Reconciliations from 2013 through 2015 for all income and expenses for Suissevale including review of journal entries, invoices and bank statements;
 - G. Water invoices for 2013 to 2015;
 - H. Names, invoices and services of accounting firms engaged to review and reconcile water billing and to make recommendations to water committee;
 - I. Closed session minutes of the board of directors and/or executive committee and/or other Suissevale committees including sessions in which expansion of audit was approved;
 - J. Tax returns;
 - K. Annual meeting minutes;
 - L. List of current Suissevale members who are assigned docks at its marina;
 - M. Contact list for all Suissevale members;
 - N. Loan agreements with Meredith Village Savings Bank;
 - O. Certifications of board or director elections and ballots from 2010;
 - P. Legal work product from Orr & Reno regarding Suissevale's authority to change the covenants; and
 - Q. Financial audits by and/or of Suissevale's board of directors and/or executive committee and/or other committees (collectively, "Documents").
16. Suissevale has denied Plaintiffs an accounting of and access to the Documents.

17. Because Suissevale has denied Plaintiffs an accounting of and access to the Documents, Plaintiffs are unable to ascertain their rights and liabilities as property owners within, and members of, Suissevale.

CAUSES OF ACTION

Count I (Accounting)

18. Plaintiffs incorporate all preceding paragraphs as if restated fully herein.

19. By the facts alleged herein, Suissevale, through its Board of Directors and Executive Committee, is a fiduciary to Plaintiffs who require access to the Documents in order to evaluate their rights and liabilities as property owners within, and members of, Suissevale.

20. By the facts alleged herein, Suissevale, through its Board of Directors and Executive Committee, maintains in a confidential manner the Documents that are necessary to Plaintiffs' ability to evaluate their rights and liabilities as property owners within, and members of, Suissevale.

21. By the facts alleged herein, Plaintiffs are entitled to an accounting of and access to the Documents.

Count II (Substantial Benefit Attorney's Fees)

22. Plaintiffs incorporate all preceding paragraphs as if restated fully herein.

23. By the conduct alleged herein, Plaintiffs are entitled to an award of their reasonable attorney's fees and costs because this action will confer a substantial benefit on the owners in and members of Suissevale.

WHEREFORE, Plaintiffs respectfully request that the Court:


- A. Order that Defendant provide access to and an accounting of the Documents to Plaintiffs;
- B. Award Plaintiffs their reasonable attorney's fees and costs associated with bringing this action; and
- C. Grant such other relief that the Court deems just and proper.

Respectfully Submitted,

DEBORAH A. CANTY and
MICHAEL A. HOWLETT

By their Attorneys,

Shaheen & Gordon, P.A.


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