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State of Minnesota
Carver County

District Court
First District

Court File Number: **10-CV-11-203**

Case Type: Civil Other/Misc.

KARL EDWARD ROBINSON
8050 W 78TH ST
EDINA MN 55439

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input checked="" type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

Traditions at Clover Ridge Condominium Association, Inc. vs The Jonathan Association, a Minnesota Non-profit corporation

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on September 18, 2012.
<input checked="" type="checkbox"/>	Judgment was entered on September 18, 2012.
<input type="checkbox"/>	You are notified that judgment was docketed on at in the amount of \$. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: September 18, 2012

Vicky L. Carlson
Court Administrator
Carver County District Court
604 East Fourth Street
Chaska Minnesota 55318
952-361-1420

cc: KARL JOSEPH YEAGER

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA

COUNTY OF CARVER

FILED
SEP 18 2012
CARVER COUNTY COURTS



DISTRICT COURT

FIRST JUDICIAL DISTRICT

CASE TYPE: CIVIL OTHER/MISC.

Traditions at Clover Ridge Condominium
Association, Inc.

Court File No.: 10-CV-11-203

Plaintiff,

vs.

The Jonathan Association, a Minnesota Non-
profit corporation,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER,
ORDER FOR JUDGMENT AND
MEMORANDUM**

The above entitled matter came on before the Honorable Kevin W. Eide, Judge of District Court, for a bench trial held on May 21 and May 23, 2012. Plaintiff was represented by Karl Yeager, Esq. Defendant was represented by Karl Robinson, Esq. The Court heard testimony from a number of witnesses and received various exhibits during the trial. After the trial, the parties were each given the opportunity to submit written arguments and proposed findings to the Court which were subsequently received from both parties.

Now, based on the file, the testimony and evidence received during the trial, and the arguments of counsel, the Court being fully advised in the premises makes the following:

FINDINGS OF FACT

1. Plaintiff Traditions at Clover Ridge Condominium Association, Inc. (hereafter "Traditions") is a Minnesota non-profit corporation and condominium association that was created in 2004 and whose members are condominium unit owners within CIC ("Common

Interest Community”) No. 60, the Traditions at Clover Ridge, a condominium, in Carver County, Minnesota.

2. CIC No. 60 was established pursuant to a Declaration recorded in the Carver County Recorder’s Office on January 23, 2004 as Document No. 378100 (“Declaration”) and is comprised of 128 condominium units.

3. Defendant The Jonathan Association (hereafter “Jonathan”) is a Minnesota non-profit corporation and a community association that was created in 1971 and is made up of various neighborhoods in Chaska, including the Clover Ridge neighborhoods surrounding Traditions.

4. Jonathan was established pursuant to its Articles of Incorporation as a Minnesota Nonprofit Corporation under Minn. Stat. §317 to provide for the maintenance, preservation and architectural control of the “Lots, Site, Living Units, Common Areas and special Common Area and for the development of such Common Areas within those portions of the Jonathan New Town Development as may be brought within the jurisdiction of this Association.”

5. Jonathan’s Articles of Incorporation provide for the annexation of additional properties into Jonathan by declaring that the Association is authorized to “participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional property and Common Areas, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of each class of members. Nothing in this paragraph, however, shall be construed to in any manner limit, restrict or interfere with the right of Developer to make additions to Jonathan or to designate additional portions of Jonathan as within the jurisdiction of the Association, pursuant to the terms of the Declarations.”

6. Jonathan now has approximately 3,500 residential living units (including single family homes, townhomes and condominiums, as well as multi-unit apartment buildings) and an estimated population of approximately 8,000.

7. The real property on which Traditions is located was previously legally described as: The West Half of the Southeast Quarter of Section 31, Township 116 North, Range 23 West, Carver County, Minnesota (hereafter "Underlying Property").

8. Town & Country Homes, Inc. ("T&C Homes") acquired the Underlying Property from Daniel and Allan Kerber ("Kerbers") on January 21, 2003, and subsequently developed Traditions at Clover Ridge.

9. Though the Underlying Property changed hands a number of times before ultimately being purchased by T&C Homes, it does not appear from the record to have ever been owned by or otherwise affiliated with Jonathan prior to 2003.

10. The Traditions condominium units are located in what is referred to as the Clover Ridge Neighborhood of Jonathan, which is within the Clover Neighborhood of Jonathan. The Clover Neighborhoods are depicted on the photographic map contained in Exhibit 6, Tab 27, as well as at page 3 of Exhibit 1.

11. The Traditions Declaration was made by T&C Homes pursuant to the provisions in Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (hereafter "MCIOA"), for the purpose of creating Traditions at Clover Ridge Condominiums, a condominium form of common interest community.

12. The Traditions Declaration is and has been of record in the Office of the County Recorder of Carver County Minnesota since January 23, 2004.

13. The Traditions Declaration states that the Declarant, Town & Country Homes, is the owner of certain real property in Carver County Minnesota as legally described in the Traditions' Declaration.

14. The Traditions Declaration provides that condominium unit owners within Traditions will be members of Traditions.

15. The Traditions Declaration also expressly provides that unit owners and members of Traditions are also members of Jonathan who are obligated to pay assessments levied by Jonathan. The Traditions Declaration states that the real property upon which Traditions is located is:

“a part of the Jonathan New Town Development, and is subject to the terms of the Declaration dated August 14, 2003, recorded on January 23, 2004, as Document No. A378098” (the “Underlying Declaration”).

The Underlying Declaration, among other things, confirms that owners of the real estate that is subject thereto are members of the Jonathan Association, and are obligated to pay assessments levied by The Jonathan Association, all as more fully described in the Underlying Declaration.

16. The Traditions Declaration also states in its definition section that owners of units within Traditions are members of Jonathan, providing as follows:

“Jonathan Association” means the non-profit corporation created under Chapter 317 of the Minnesota Statutes which serves as an association of property owners for the development known as Jonathan New Town Development, of which the Property and the Additional Real Estate are a part. The Owners of Units in the Property are members of the Jonathan Association (as are other property owners within the Jonathan New Town Development). This membership is in addition to an Owner's Membership in the Association described in Section 1.2 above.

17. The Traditions Declaration provides a definition of the “Underlying Declaration” which confirms that unit owners in Traditions are members of Jonathan, providing:

“Underlying Declaration” means the Declaration dated August 14, 2003, recorded on January 23, 2004, as Document No. A378098. The Underlying Declaration contains certain covenants, conditions and restrictions that are binding upon the Property. Among other things, the Underlying Declaration confirms that Owners of the Property are members of the Jonathan Association, and are obligated to pay assessments levied by the Jonathan Association, all as more fully described in the Underlying Declaration.

18. T&C Homes, as owner and developer of the Traditions project, knowingly subjected Traditions to the requirements of membership in the Jonathan master association.

19. All subsequent unit owners and members of Traditions took title to their condominium units with constructive notice of and subject to the Traditions Declaration that was filed as of record in the Carver County Recorder’s Office.

20. The Underlying Declaration is dated August 14, 2003, was also made by T&C Homes and was recorded as Document No. A378098 in the Office of the County Recorder of Carver County Minnesota on January 23, 2004 at 11:00 a.m. The Underlying Declaration also contains the approval and acceptance of its terms by Jonathan’s Board President dated September 9, 2003.

21. The Underlying Declaration provides that the Declarant, T&C Homes, is the owner of certain real property legally described in the Declaration, which includes all of the property set forth in the Traditions’ Declaration.

22. The Underlying Declaration provides that each owner of a condominium unit within Traditions is a member of Jonathan. The Underlying Declaration provides as follows:

2.1 Membership in Jonathan Association. Each Owner owning a “Lot” within any portion of the Property developed as a residential single family home community or a “Unit” within any portion of the Property developed as a condominium or planned community form of common interest community, shall be a Member of the Jonathan Association and shall be entitled to one vote for each Lot or Unit owned. When more than one person holds an interest in

any Lot, or Unit, all such person shall be Members. The vote for such Lot or Unit shall be exercised as the Owners of the Lot or Unit may among themselves determine, but in no event shall more than one vote be cast with respect to each Lot or Unit. Owners of developments within Jonathan, but outside of the Property, also are Members of the Jonathan Association.

23. The Underlying Declaration states that all unit owners within Traditions are required to pay Jonathan assessments because they are members of Jonathan, providing:

2.3. Obligation to Pay Jonathan Assessments. By virtue of being a Member of the Jonathan Association, the Owner of any Lot, Unit, or Multiple Dwelling, shall be deemed to have covenanted to pay Jonathan Assessments in accordance with Article 6 [sic] of this Declaration.

24. Article 5 (not Article 6 as stated above, which is presumed to be a typographical error) of the Underlying Declaration sets forth the obligation of each member of Traditions to pay Jonathan assessments. Section 5.1 of the Underlying Declaration provides:

Each Owner of a Lot or Unit . . . is hereby deemed to covenant and agree, whether or not it shall be expressed in his or her deed, or contract for deed, to pay the Jonathan Association Jonathan Assessments comprised of: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such as Jonathan Assessments to be established and collected as hereinafter provided. . . . Each such Jonathan Assessment, together with interest, cost and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot when the Jonathan Assessment fell due.

25. Jonathan did not hold or take a vote of its members before approving the annexation of Traditions into Jonathan.

26. All unit owners and members of Traditions took title to their condominium units with constructive notice of and subject to the Underlying Declaration that was filed as of record in the Carver County Recorder's Office.

27. The Underlying Declaration has been of record since January 23, 2004, and therefore Jonathan has subjected Traditions and its members to the Underlying Declaration since that time, including assessing for expenditures authorized by the Underlying Declaration.

28. The records presented indicate that Jonathan began assessing Traditions homeowners as they purchased their properties, with the earliest assessment apparently occurring in April 2004.

29. Jonathan provides a variety of services and amenities to all of its members, including Traditions and its members.

30. The services that Jonathan provides to its members, including members of Traditions, include the following:

- a. Spring Clean-Up. Jonathan provides a free spring clean-up service to all of its members providing for a one time pass through to pick up all bagged leaves and bundled twigs.
- b. Fall Clean-Up. Jonathan provides a free fall clean-up service to all of its members providing for a one time pass through to pick up all bagged leaves and bundled twigs.
- c. Maintenance of Jonathan walking paths and trails, including year-round lawn care, fertilization, weed control and snow removal. These trails and walking paths include both asphalt pavement and concrete walking paths. Jonathan walking paths and trails are interconnected with and intertwined with City and Regional trails maintained by the City of Chaska, Carver County and other governmental entities. These walking paths and trails maintained by Jonathan are used by many Jonathan members, including Traditions members.

- d. Maintenance of Boulevard and Streetscapes, including year-round lawn care, fertilization and weed control.
- e. Boulevard and Streetscapes tree maintenance, removal and replacement as necessary. The City of Chaska will not plant or maintain such trees; instead it is clear from the testimony presented that it is Jonathan's responsibility to maintain such boulevard trees.
- f. Lawn Care for vacant or foreclosed properties. As Ms. Teske testified, Jonathan attempts to recoup the cost of such lawn care for vacant or foreclosed properties by charging back these costs to the financial institution or other owner of such foreclosed properties.
- g. Maintenance of the 19 Jonathan "Tot Lot" Parks which have playground equipment for children, including maintenance, repair and replacement of playground equipment. As all witnesses confirmed, there are three Tot Lots within the Clover Neighborhoods of Jonathan. Further, all witnesses agree that there is one Tot Lot that is only 50 feet away from Traditions condominium units. The Court draws the reasonable inference that many Traditions members take advantage of the availability of this Tot Lot, either for their own children, for relatives or for friends. The Court also notes that the immediate presence of such a Tot Lot within 50 feet of the Traditions condominiums obviously adds value to the Traditions condominiums.
- h. Maintenance of mailbox clusters and provision of discounted mailbox locks/key replacement as needed.

- i. Maintenance, repair and replacement of neighborhood monument signs, including landscaping and lighting. In particular, the Court notes testimony from multiple witnesses confirming that there are at least three neighborhood monument signs in the Clover Neighborhoods with surrounding landscaping.
- j. Maintenance and repair and replacement of the Silo and all landscaping surrounding the Silo.
- k. Maintenance and repair and replacement of the Obelisk and surrounding landscaping.
- l. Maintenance and repair and replacement of the Gazebo and landscaping surrounding the Gazebo.
- m. Maintenance of Karen House, including interior maintenance and renovations, and exterior maintenance and renovations, including roof and windows.
- n. Maintenance of the Pavilion, including maintenance, repair and replacement as necessary of roof, walls, wood siding, and paint.
- o. Maintenance of the Eitel House, including maintenance, repair and replacement as necessary of interior and exterior, including roof and windows.
- p. Maintenance of windmills, light poles and fixtures, retaining walls, various pavers and bricks and storage facilities located throughout Jonathan.
- q. Provision of free community events, including the annual Festival of Garage Sales, the 4th of July Celebration at the Karen House, National Night Out, and Cocoa and Coasting Sledding Event. The Court finds credible the testimony from Mr. Bostrom and Ms. Teske, among others, regarding the value provided by these community events to all Jonathan members, including the members of

Traditions. The Court also finds that such community events would not occur but for Jonathan's financial assistance and organizational expertise in putting on these events.

- r. Free copies and faxes at the Karen House.
- s. Free subscription to the Jonathan Neighbors Newsletter issued four times per year. The Court notes that Exhibit 6, Tab 4 contains accurate and complete copies of four Jonathan Newsletters issued during 2011. The Jonathan Neighbors Newsletter contains information beneficial to all Jonathan members, including members at Traditions. The Court notes that the Newsletter contains information provided by Chaska Police, by Chaska City Council Member Greg Boe, information regarding how to contact Jonathan's property managers, including Nancy Teske, information from Randy Maluchnick, Carver County Board Chair, as well as additional information that would be of assistance to Jonathan members, including Traditions members.
- t. Liability insurance for all Common Areas. The Court notes that such liability insurance includes coverage for claims involving personal injury incurred at any of the 19 Jonathan Tot Lots, including the three within the Clover Neighborhoods and the one that is 50 feet away from the Traditions condominium units.
- u. Providing garden plots for a minimal fee to members.

31. The photographic exhibits and testimony received indicate that Jonathan has been maintaining the monument signs and other Jonathan facilities in a professional and competent manner.

32. Jonathan also maintains a reserve fund for expected and potential future capital expenses. The rationale underlying the reserve account is set forth in detail in the full reserve study produced for the Jonathan Association set forth at Exhibit 6, Tab 21. The Court also notes that Jonathan's financial reports set forth at Exhibit 6, Tab 18 include detailed information regarding Jonathan's contributions to this reserve account. Jonathan has engaged in proper and prudent budgeting practices by establishing and funding a reserve account for these expected future capital costs, as well as providing a reserve of potential funds for any unexpected future expenses,.

33. Jonathan incurs various expenses in providing services and amenities to its members as detailed in its annual reports. For example, in the 2010 Annual Report, Jonathan provided detailed information regarding its budgeted and actual expenses incurred in providing such services, and its 2011 budget for providing such services.

34. Jonathan's 2011 Annual Report disclosed in similar detail expenses incurred by Jonathan in providing services and amenities to its members. In particular, the 2011 Annual Report at pages 14-15 (Exhibit 6, Tab 11) details expenses incurred through September 30, 2011, as well as the 2012 budget. This shows that maintenance expenses for the nine month period through September 30, 2011 totaled \$168,423.27. Additional amounts were incurred for payroll expenses devoted to, among other things, maintenance. There were also additional administrative expenses, insurance expenses and reserve account contributions.

35. Jonathan also prepared Neighborhood Equity Analyses for each of the various neighborhoods within Jonathan for 2009, 2010 and 2011. These Neighborhood Equity Analyses are set forth in Exhibit 6, Tab 13.

36. The Neighborhood Equity Analyses provide more specific information regarding each of the Jonathan neighborhoods and the capital and other expenses incurred by Jonathan for such neighborhoods.

37. The 2009 Equity Analysis for the Clover Traditions Neighborhood (the neighborhood within which Traditions condominium units are located) discloses that Jonathan incurred significant capital expenses for the direct benefit of the Clover Traditions Neighborhood, including Traditions members. (Exhibit 6, Tab 13 at page D01314.) These capital expenses totaled \$17,654.00, and included planting boulevard trees and capital expenses for entrance monuments and landscaping.

38. The 2010 Neighborhood Equity Analysis discloses capital expenses by Jonathan for the direct benefit of the Traditions Clover Ridge Neighborhood, as well as showing an allocation of many shared expenses provided for the benefit of all of Jonathan. (Exhibit 6, Tab 13 at page D01337.)

39. The 2011 Neighborhood Equity Analysis shows additional capital expenses in the form of boulevard trees being planted in the Traditions at Clover Ridge Neighborhood. (Exhibit 6, Tab 13 at page D01360.)

40. All Jonathan members are invoiced for annual assessments each year.

41. The amount of Jonathan annual assessments is set at the same level for all members. Thus, each residential unit is assessed the same annual fee, whether it is a single family home, a condominium, a townhome, or any other type of residential unit.

42. Jonathan normally issues invoices for its annual assessments in late December/early January, with payment due from the Jonathan member/homeowner in January of the year of the assessment.

43. For 2009, Jonathan's annual assessment was \$204.75 for each Jonathan homeowner/member. For 2010, Jonathan's annual assessment was \$215.00. For 2011, Jonathan's annual assessment was \$225.00. For 2012, Jonathan's annual assessment was \$236.25.

44. The 2011 Neighborhood Equity Analysis for Traditions at Clover Ridge also shows a significant increase in the amount of Jonathan assessments not being paid by members of the Traditions at Clover Ridge Neighborhood, a reflection of the fact that many Traditions members ceased paying their Jonathan assessments pending the results of this lawsuit.

45. As detailed in Exhibit 6, Tab 20, since as early as April 2004, Jonathan has assessed and collected assessments from Traditions' members who own condominium units within Traditions.

46. Exhibit 6, Tab 20 also details numerous other Traditions' members and condominium owners who were assessed for Jonathan assessments in 2004 and who made payments of such assessments to Jonathan in 2004.

47. Exhibit 6, Tab 19, details Traditions' members making payments of Jonathan assessments from 2009 through approximately May 15, 2012. These detailed account statements show that many Traditions members have paid their annual assessments in full to Jonathan despite the claims being made by Traditions in this lawsuit. These details also show many members of Traditions who regularly and voluntarily paid their annual assessments to Jonathan until the commencement of this lawsuit in early 2011.

48. Traditions' own board members and officers testified that they voluntarily paid Jonathan assessments for multiple years prior to the commencement of this lawsuit.

49. In a letter dated December 20, 2010, Traditions' property manager, Paul Lawson of Gittelman Community Association Management ("Gittelman"), informed all of the Traditions' members that Traditions' counsel was recommending that they cease paying Jonathan annual assessments. Specifically, Mr. Lawson told Traditions' members that Traditions' counsel "recommends that the members of Traditions . . . should not pay any fees to the Jonathan Association at this time." (Ex. 6, Tab 41) (emphasis in original). Despite this correspondence, many Traditions members voluntarily paid their Jonathan assessments in 2011 and 2012.

50. Traditions commenced this action against Jonathan by serving Jonathan's counsel with the Summons and Complaint on January 21, 2011.

51. Traditions has failed to provide any credible evidence to the Court which would show that the Jonathan assessments were unjustly or improperly retained.

52. Based upon the services provided by Jonathan, the Court finds that the amounts assessed to the Jonathan members, including those members within Traditions, are reasonable and justified.

53. The Court finds credible the testimony of both Greg Boe and Nathan Bostrom that the City of Chaska has made clear to Jonathan that the City will not assume any maintenance obligations for any maintenance that is currently performed by Jonathan.

54. The Court also finds credible the testimony of both Mr. Boe and Mr. Bostrom that the City of Chaska has made clear that it will not perform any of the services that Jonathan currently provides for the benefit of its members, nor will the City of Chaska provide any of the amenities currently provided by Jonathan to its members. Instead, if Jonathan were to cease providing the services (such as maintenance of the boulevard trees located within the Clover

Neighborhoods) some other person or entity other than the City of Chaska would have to assume this responsibility.

55. The Court notes that Mr. Lawson testified regarding the potential of Traditions assuming certain maintenance or service obligations for maintenance or services currently provided by Jonathan. However, the Court also notes as Mr. Lawson testified, none of these ideas had been communicated to Jonathan and there are no plans in place for Traditions to actually perform any of these services or take responsibility for any such maintenance. Therefore, the Court finds such testimony to be mere speculation and the Court will instead assume that were it to grant the relief requested by Traditions, that Jonathan would continue to have the responsibility for such maintenance obligations and have the responsibility for providing such services and amenities as it currently provides.

56. Similarly, the Court heard testimony from Mr. Boe regarding the potential of other homeowners associations or sub-associations assuming maintenance obligations within the Clover Neighborhoods of Jonathan and/or providing certain of these services and amenities currently provided by Jonathan to Jonathan members residing in the Clover Neighborhoods. Again, the Court finds that such testimony concerns potential future action, and that there currently are no such homeowners associations or sub-associations ready, willing or able to immediately assume such maintenance obligations or provide such services and amenities. As a result, the Court assumes that if it granted the relief requested by Traditions that Jonathan would continue to be obligated to provide such maintenance and would continue to incur the cost and expenses with providing these services and amenities to its members, including those members within Traditions.

57. The Court also finds that the vast majority of the maintenance obligations, and the services and amenities provided by Jonathan, cannot be scaled back or modified to exclude Traditions members.

58. All of the services and amenities listed in paragraph 30 above would continue to be provided by Jonathan to its members even if the Court were to grant the relief sought by Traditions. For example, Jonathan cannot and will not simply cease maintaining the walking paths and trails simply because the 128 members of Traditions no longer are a part of Jonathan. As Ms. Winblad candidly testified, she and others would continue to use such walking paths and trails, but they would simply no longer have any obligation to pay Jonathan dues to pay for the cost of maintaining such walking paths and trails. Similarly, Jonathan would continue to maintain boulevard trees with the Clover Neighborhoods and would continue to maintain the three Tot Lots that are located with the Clover Neighborhoods, including the one that is 50 feet away from the Traditions condominium units.

59. The Court also finds that if it granted the relief sought by Traditions that the Traditions condominium units would literally be an island surrounded on all sides by residential units whose owners are members of Jonathan and obligated to pay Jonathan annual assessments. Thus, Traditions members would continue to enjoy all of the same services and amenities provided by Jonathan, but they would not have to pay for such services and amenities even though their immediate neighbors would be required to do so.

CONCLUSIONS OF LAW

1. Traditions' claims against Jonathan that it did not have the legal right or authority to enter into the Underlying Declaration pursuant to Minn. Stat. §317A or that the Underlying

Declaration is void for failure to comply with Minn. Stat. §515B, are time-barred after January 23, 2010, pursuant to the six year statute of limitation contained in Minn. Stat. §541.05.

2. Even if Traditions' claims against Jonathan that the Underlying Declaration is void for failure to comply with Minn. Stat. §515B were not time-barred, because it was established in 1971, the Minnesota Common Interest Ownership Act ("MCIOA") set forth in Minn. Stat. §515B does not apply to Jonathan except with respect to the recording and sales provisions of Minn. Stats. §§515B.1-116, 515B.4-107, and 515B.4-108.

3. The MCIOA also does not apply to the Underlying Declaration in that it is not a "Declaration" which "creates a common interest community" as defined by the statute. *See* Minn. Stat. §515B.1-103, Subd. 16 (2011).

4. Even if Traditions claims against Jonathan pursuant to Minn. Stat. §317A were not time-barred, the Court would still not find that repudiation of the annexation of Traditions into Jonathan is appropriate under Minn. Stat. §317A.165, subd. 2.

5. The factual findings set forth above show Jonathan provides many services and amenities to all of its members, including Traditions members.

6. These services and amenities furnished by Jonathan provide significant value to Traditions members.

7. As a practical matter, it would be impossible for Jonathan to cease providing the above services and amenities to Traditions members. Jonathan provides all of the above services and amenities to all of its Jonathan members, including the Traditions members. Jonathan cannot simply cease maintaining Tot Lots, boulevard trees, trails and walking paths or entrance monuments simply because the Traditions members do not want to pay for such services. In addition, the City of Chaska has made clear that it will not assume any obligation to provide any

of these services and amenities or to assume responsibility for any of Jonathan's maintenance activities. As a result, if this Court were to grant the relief sought by Traditions, Traditions members would simply receive all of these same services and amenities currently provided by Jonathan, but they would no longer have to pay any part of the cost of such services and amenities. As such, it is simply not "just and reasonable" to declare the Underlying Declaration void and unenforceable. In contrast, requiring the Traditions members to pay the modest annual assessments to Jonathan is just and reasonable because they receive value for such assessments.

8. Based on the scope of the services and amenities provided, the Court cannot find that the Jonathan assessments assessed to date were unjustified, or that Jonathan was unjustly enriched as a result of the assessments.

9. The facts set forth herein show that a ruling that the Underlying Declaration is void and unenforceable would not be "just and reasonable."

THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COURT MAKES THE FOLLOWING:

ORDER


1. All of Plaintiff's claims against Defendant are dismissed with prejudice; and
2. Defendant is awarded all of its recoverable costs and disbursements incurred herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: September 18, 2012

By 
The Honorable Kevin W. Eide
Judge of District Court

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT

DATE 9/18/12
VICKY L. CARLSON
COURT ADMINISTRATOR, CARVER COUNTY MINN
DEPUTY 

MEMORANDUM

I. Whether Traditions' claims are precluded by the applicable statute of limitations.

Pursuant to Minn. Stat. §541.05, Subd. 1, actions based upon a contract or other obligation, or upon a liability created by statute shall be commenced within six years. Minn. Stat. §541.05, Subd. 1(1)&(2) (2011). As discussed in connection with the Court's decision on the parties' summary judgment motions, both parties have pointed to *Roth v. Weir*, 690 N.W.2d 410 (Minn. Ct. App. 2005) in support of their arguments. Pursuant to *Roth*, the delivery of a defective deed is not sufficient to start the limitations period, but the successful assertion of an interest in property contrary to the covenantee's interest is sufficient to start the running of the limitations period. *Id.* at 415. In *Roth*, a matter involving the foreclosure of a mortgage not previously disclosed to the purchaser, the Court found that the limitations period began to run not with the delivery of a defective deed, but at the point when an undisclosed mortgage was successfully foreclosed. *Id.*

This case, however, does not deal with a defective deed for property with an undisclosed mortgage which was only made known to purchasers long after receipt of the deed. Instead, the Traditions' owners purchased their properties with full knowledge of the Underlying Declaration and Traditions' presumed membership in Jonathan. The Underlying Declaration was signed by Jonathan's then-president on September 9, 2003 and recorded on January 23, 2004. Jonathan's interest, to the extent that it is considered "contrary" to the Traditions property owners, was first publicly asserted with the filing of the Underlying Declaration. Traditions argues extensively that the limitations period for bringing claims against Jonathan should run from the date the first homeowners purchased their properties from the developer. This argument fails to take into account the fact that Jonathan's interest was asserted against the developer, T&C Homes, as well. In addition, to toll the commencement of a limitation period pending the purchase of a unit in Traditions, when years could pass before all units were sold, could have the effect of indefinitely subjecting Jonathan to a liability which is certainly intended to be limited by our statutes. As a result, any claims against Jonathan that it did not have the legal right or authority to enter into the Underlying Declaration, or that the Underlying Declaration is void, are time barred after January 23, 2010. That said, the Court cannot find that the six year statute of limitations serves to preclude Traditions members from asserting claims that they were

unlawfully or unjustly assessed by Jonathan on an ongoing basis during the six years prior to the commencement of these proceedings on January 12, 2011.

II. Minn. Stat. §515B

Traditions has argued that the Underlying Declaration is void and unenforceable because it fails to comply with the provisions of Minn. Stat. §515B. As addressed above, the Court finds that this issue is time-barred pursuant to Minn. Stat. §541.05. However, even if this claim was not time barred, the Court would still find that Traditions argument fails.

The Minnesota Legislature enacted the Minnesota Common Interest Ownership Act (hereafter “MCIOA”) set forth in Minn. Stat. Chapter 515B in 1993. It was approved by the governor on May 17, 1993 and became effective as of June 1, 1994. As initially written, the MCIOA stated “This chapter shall not apply to cooperatives and planned communities created prior to June 1, 1994; except by election pursuant to subsection (d) and except that section 515B.2-118 (Amendment of Declaration) shall apply to all planned communities created in this state prior to June 1, 1994.” Minn. Stat. §515B.1-102(b)(3) (1993). In 1994, Minn. Stat. §515B.1-102(b)(3) was amended to read only, “This chapter shall not apply to cooperatives and planned communities created prior to June 1, 1994; except by election pursuant to subsection (d).” Minn. Stat. §515B.1-102(b)(3) (1994). The application of section 515B.2-118 regarding amendments to declarations to planned communities created prior to June 1, 1994 was removed. Had the legislature intended the MCIOA to be applicable to amendments to planned communities created prior to June 1, 1994, the Court presumes that language would have been retained. Minn. Stat. §515B.1-102(b)(3) now reads, “This chapter shall not apply to cooperatives and planned communities created prior to June 1, 1994, or to planned communities that were created on or after June 1, 1994, and before August 1, 2006, and that consist of more than two but fewer than 13 units; except by election pursuant to subsection (d), and except that sections 515B.1-116, subsections (a), (c), (d), and (e), 515B.4-107, and 515B.4-108, apply to all planned communities and cooperatives regardless of when they are created, unless they are exempt under subsection (e).”

Clearly, the MCIOA does apply to the formation of new associations formed after June 1, 1994, like Traditions. It does not, however, apply to Jonathan, which was established in 1971, except with respect to the recording and sales provisions of Minn. Stats. §§515B.1-116, 515B.4-

107, and 515B.4-108. In addition, the MCIOA does not apply to the Underlying Declaration in that it is not a “Declaration” which “creates a common interest community” as defined by the statute. *See* Minn. Stat. §515B.1-103, Subd. 16 (2011). Though entitled “Declaration,” the Underlying Declaration serves not to create a common interest community, but to subject Traditions to one which had already been formed. Because Jonathan is not subject to the MCIOA as addressed above, and even amendments to such prior associations are excluded from the provisions of the MCIOA, the Underlying Declaration cannot be deemed void or invalid based on its failure to comply with Minn. Stat. §515B.

III. Minn. Stat. §317A

Traditions also argues that because Jonathan’s annexation of the Traditions property was done in violation of its own by-laws requiring a 2/3rds majority vote prior to any such annexation, Jonathan’s enforcement of the Underlying Declaration and assessment of Traditions members constitutes continuing “ultra vires” acts pursuant to Minn. Stat. §317A.165. Minn. Stat. §317A.165 provides, in relevant part, as follows:

“At least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may bring an action against the corporation to enjoin the doing, continuing, or performing of an unauthorized act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract.” Minn. Stat. §317A.165, Subd. 2 (2011).

The term “ultra vires” refers to an act performed by a corporation which is beyond the powers defined by its charter or the laws of its state of incorporation. *See* BLACK’S LAW DICTIONARY 1522 (6th ed. 1990). An “ultra vires” contract, fully performed on one side, is enforceable either in favor of or against a corporation, unless expressly prohibited by statute. *Benson Lumber Co. v. Thornton*, 240 N.W. 651, 654 (Minn. 1932). In other words, if a corporation receives from an individual a substantial benefit under such a contract, it cannot repudiate the contract without restoring the benefit received. *Id.* On the other hand, if an individual receives money or property from a corporation under such a contract, he, or those

claiming under him, cannot repudiate the contract without restoring what was received. *Id.* While this rule is generally said to be based on estoppel, it is equally sustained by the equity rule that one person or party shall not be permitted to unjustly enrich himself at the expense of another. *Id.*

Jonathan acknowledges that it did not seek or obtain the approval of a 2/3rds majority of its membership prior to signing the Declaration annexing Traditions. As discussed above, the Court has found that any challenges to Jonathan's initial execution of the Underlying Declaration are time-barred. Traditions, however, is also challenging the validity of Jonathan's ongoing assessments. Since Jonathan annexed Traditions, Traditions homeowners have been the recipients of the many services and amenities provided by Jonathan as detailed above in Finding 28. In exchange for these services, Traditions homeowners have been billed an average of approximately \$200.00 a year, or \$16.66 per month. Based on the scope of the services and amenities provided, the Court cannot find that the assessments were unjustified, or that Jonathan was unjustly enriched as a result of the assessments.

Conclusion

Traditions brought this matter seeking an order declaring that Jonathan has no adverse claims against the Traditions owners; that the Underlying Declaration is void and that the Traditions owners have no obligation to pay the Jonathan assessments; and that they are entitled to a financial award for assessments improperly paid to Jonathan. As discussed herein, Traditions claims that Jonathan did not have the legal right or authority to enter into the Underlying Declaration, or that the Underlying Declaration is void are time barred after January 23, 2010. Even if Traditions' claim that the Underlying Declaration is void for failure to comply with Minn. Stat. §515B was not time barred, it would still fail in that the Underlying Declaration is not a "Declaration" creating new association pursuant to Minn. Stat. §515B, and Jonathan, having been formed in 1971, is not subject to the MCIOA. Finally, though Jonathan's annexation of Traditions into its association may have constituted an "ultra vires" act, and its ongoing assessments of the Traditions properties may constitute continuing "ultra vires" acts, the Court cannot find that the assessments were unjustified, or that Jonathan was unjustly enriched by those assessments.

In like manner, the Court notes that even if Traditions claims against Jonathan pursuant to Minn. Stat. §317A were not time-barred, the Court would still not find that repudiation of the annexation of Traditions into Jonathan is appropriate. As testified to by Chaska City Council Member Gregory Boe, the City of Chaska will not take over management of the facilities within Jonathan. If Traditions were no longer a part of Jonathan, Traditions would be required to form a replacement association, one which would be operating independently while surrounded by other properties who are a part of Jonathan. Based on geography alone, Traditions homeowners would continue to receive the benefit of living in the heart of the Jonathan community, without any obligation to contribute to the maintenance of the common areas and amenities not in their immediate proximity. Traditions has argued that Jonathan has been unjustly enriched by assessing Traditions homeowners for their affiliation with Jonathan. Were Traditions homeowners no longer members of Jonathan, those members would be unjustly enriched by having received the ongoing benefits of living in the heart of Jonathan without paying for any of those benefits.

K.W.E.

