

ANALYSIS OF FORMATION OF RAMAPO MOUNTAIN LAKES, INC.

Introduction

Ramapo Mountain Lakes, Inc. and the Ramapo Mountain Lakes Country Club were originally formed by the Developer, National House & Farms Association, Inc. (“Developer”) and its principals. An early zoning case entitled, National House & Farms Ass’n, Inc. v. Board of Adjustment of the Borough of Oakland, 2 N.J. 11 (Supreme Court 1949), provided a history of the development of Ramapo Mountain Lakes, Inc. (“RML”). While the case itself is not on point, it does provide important evidence of the original intent of the Developer.

In 1937, National House & Farms Association, Inc. acquired a tract of land of approximately 700 acres in Oakland. The tract included two freshwater lakes on the property, Crystal Lake and Mirror Lake. The Developer laid out a tract in building lots for use as a private, restricted summer colony. As the formation of RML predated the municipal land use law, the Developer sub-divided and developed the property pursuant to a system of filed maps.

A bathing beach was developed adjacent to Crystal Lake for the exclusive use of the property owners. The outside public was completely barred from the property and its use was limited to property owners, their families and guests, according to the testimony presented in this case. The Developer built several miles of streets and roads, as well as sewage and water facilities. The court found that Ramapo Mountain Lakes was a self-contained community and neither the residents of Oakland nor the general public frequented the area or used its facilities.

According to the case, and confirmed below, the Developers issued Class A Stock in a separate corporation to each property purchaser. When the development was nearly complete, ownership of the lakes and common properties were transferred to the separate corporation, and a country club was formed to manage the facilities.

Ramapo Mountain Lakes, Inc. (RML)

The original Certificate of Incorporation of Ramapo Mountain Lakes, Inc. was executed on May 11, 1944 and filed on May 12, 1944. The original incorporators, Benjamin J. Kline, Morton Kline and Norman Kline, were also the principals of the National House & Farms Association. Ramapo Mountain Lakes, Inc. was formed as a for-profit stock corporation. The purposes listed in the original Certificate of Incorporation were as follows:

“To buy, own, hold, control, develop, improve, pledge, mortgage, lease, sell or otherwise acquire and/or dispose of real estate and personal property or any interest therein; to contract and be contracted with; to sue and be sued; to loan upon real estate, to take mortgages and assignments of mortgages on the same; to stimulate investment in properties at Oakland and to create and establish Club and community spirit and to sponsor social and athletic activities on the part of its duly accepted members, and to transact any other business which may be necessary or needful or proper to exercise any or all of the aforesaid purposes of the Corporation wherever same may be permitted by law and to do any and all of the business above mentioned and set forth to the same extent that natural persons might or could do.”

Originally, stock was issued to each lot purchaser, but the voting shares were retained by the Klines. Three thousand (3,000) shares of Class A Stock with a par value of ten dollars (\$10.00) and thirty (30) shares of Class B Stock with no par value were authorized. Class A Stock shareholders were entitled to receive dividends, if any, and must receive those dividends before dividends were set for Class B Stock. This Certificate specifically provided that if the corporation were dissolved, Class A Stocks would receive fifteen dollars (\$15.00) per share and the remainder distributed among the holders of the Class B Stock while voting power was vested in Class B Stock and the Class B Stock was held at ten (10) shares each in the original incorporators names.

Once the development was nearly completed, the Developer took steps to transfer control to the property owners. A Certificate of Amendment of the Certificate of Incorporation of RML was filed on January 15, 1954, to reflect a resolution by the Board of Directors that the Class B Stock of the corporation be redeemed, cancelled and retired. The Amendment made further changes to the terms of the Class A Stock as follows:

“Subject to the provisions of the General Corporations Act of New Jersey, the Class “A”

stock of this Corporation shall not be sold, transferred or assigned to any person, firm or corporation who shall not be an owner, by deed, devise or descent of property in the community known as Ramapo Mountain Lakes located in Oakland, in the County of Bergen, New Jersey.”

This further significant change was made to the owners of the Class A Stock.

“Any present or future owner of Class “A” stock in this corporation shall be obligated to sell, transfer or assign his or her shares of Class “A” stock at the same time he or she sells, transfers or assigns title to his or her property in Ramapo Mountain Lakes, Oakland, New Jersey; the intention being that every property owner in the aforementioned community, both present and future, shall be a stockholder; and further so that there will not be in the future any stockholder who is not a property owner, in order to carry out the purposes and intentions for which this corporation is formed, namely, to insure the private uses and enjoyment of Ramapo Mountain Lakes, the Club house and the other recreational facilities of this corporation to property owners in the community and their immediate families.”

“All Class “A” stockholders shall automatically be members of this corporation and shall remain members as long as they continue to hold property in the aforementioned community and/or hold Class “A” stock in this corporation. Stockholders shall cease to be members upon transfer of title to their properties and their stock. Members and stockholders shall be subject to any and all by-laws and rules and regulations duly adopted or enacted by the directors of this corporation.”

These changes to the Certificate of Incorporation were intended to bind property owners and shares together. This was confirmed with similar language on the Certificate itself. This is an unusual formation; for most other lake associations that we have represented, the obligations of each property owner was accomplished with property covenants. The Amendment went on to make certain changes to the operations of the corporation and in particular the power of the directors of the corporation. The Amendment specifically stated that the by-laws of the corporation shall be enacted, made, altered, amended or repealed only by a vote of the majority of the stockholders present, in person or by proxy, at a regular or special meeting of the stockholders called for that purpose.

Deed Transferring Lakes and Common Property

On December 24, 1951, an Indenture (or deed) was entered into between National House & Farms Association, Inc. and Ramapo Mountain Lakes, Inc. This Indenture confirmed that at the time National House & Farms Association, Inc. sold the individual lots to the individual

purchasers in the development, it made agreements with the purchasers that they would become a part owner of all of the common facilities, including the lakes, river, clubhouse, etc. through stock ownership in the corporation which owned the properties. Stock certificates of RML had been issued to each purchaser. The purpose of this Indenture, therefore, was to transfer ownership of those individual properties to Ramapo Mountain Lakes, Inc. It also confirmed that at the time of transfer, the Developer had agreed to the cancellation of the thirty (30) shares of the Class B Voting Stock of Ramapo Mountain Lakes, Inc., which would have the effect of transferring the control of the corporation from the original three Kline Developers to all Class A Stock shareholders, which were the property owners in the community.

Pursuant to the Indenture, the following properties were transferred from National House & Farms Association, Inc. to Ramapo Mountain Lakes, Inc.:

- Crystal Lake and appurtenant beach area;
- Mirror Lake and appurtenant beach area;
- The lot on which the swimming pool was located;
- The Clubhouse and recreation area.

This deed appears to be received and recorded by the Bergen County Clerk on December 27, 1951.

Ramapo Lakes Country Club (“Club”)

A Certificate of Incorporation of the Ramapo Mountain Lakes Country Club (“Club”) was executed on January 8, 1954. The New Jersey non-profit corporation statute (N.J.S.A., Title 15A et seq.) was in existence at the time and most lake associations formed in and around this time were formed as non-profit corporations. However, the Club was formed as a corporation under Title 15 of the revised statutes, which is the for-profit corporation statute. The purpose for which the Club was formed was “to further the social, recreational and athletic activities of the property owners in the community known as the Ramapo Mountain Lakes Development and to operate and maintain the recreational facilities within said development.” There were fifteen (15) original Trustees who were also the original executors of the Certificate of Incorporation.

At Article Sixth, it is stated that:

“Only such persons as now hold or may hereafter acquire property in the Development and stock or who by written contract shall, upon performance thereof become entitled to become the owner of such stock in Ramapo Mountain Lakes, Inc., a New Jersey Corporation shall be eligible as members; and the person (or, collectively, the persons) holding title to any property in the Ramapo Mountain Lakes Development shall between or among themselves constitute one membership and shall have one vote at meetings of the members. Upon transferring title to the property and/or the stock so held the membership shall cease.”

A Certificate of Amendment to the Certificate of Incorporation of the Club was filed on January 14, 1967. It stated that only persons who hold property in the Ramapo Mountain Lakes Development and stock in the Ramapo Mountain Lakes Corporation may become eligible for membership in the Club. However, it allowed for the first time persons who are non-property owners or non-shareholders to become approved for membership or Class AA members. The amended Certificate of Incorporation further allowed for four (4) non-property owners and non-stockholders to be on the Board of Governors, whose membership totaled fifteen (15) members.

Tripartite Agreement

Shortly after the Club was formed, an Agreement was entered into on March 10, 1954 between the original Developer, National House & Farms Association, Inc., Ramapo Mountain Lakes, Inc., and Ramapo Mountain Country Club (“Tripartite Agreement”). The preamble of this Tripartite Agreement is a valuable summary that reflects the original intent of the Developers. It confirms that National House & Farms Association, Inc. owned and developed the property by sub-dividing it into residential lots with certain recreational facilities, which included two lakes, a clubhouse, the swimming pool and tennis courts. The Developer incorporated Ramapo Mountain Lakes, Inc. to serve as a “property owners’ corporation” and to take title to the common properties for the “ownership, protection, benefit and use of all said Ramapo Mountain Lakes property owners as a private and restricted project.” The Tripartite Agreement confirmed that National House & Farms Association, Inc. had on December 24, 1951 deeded all of the common properties to RML. Further, the Developer had surrendered the Class B Voting Stock and vested all voting power only in the Class A Stock of the corporation which was held by the individual property owners. The Tripartite Agreement confirmed that the corporate books and stock records had all been turned over from the Developer to RML.

The Tripartite Agreement confirmed the formation of the Club, and stated the purpose of the Ramapo Mountain Lakes Country Club was to further “the social, recreational and athletic activities of the property owners in the community known as Ramapo Mountain Lakes Development and to operate and maintain the recreational facilities within said development.”

The Tripartite Agreement provided at Paragraph 3, that the Developer would retain a share of Class A Stock for each building lot that had not yet been sold by the Developer, for the purpose of transferring that share to each of the individual purchasers at the time the lots were deeded to such purchasers. The Developer agreed to return any excess shares to RML for cancellation once all of the lots had been sold.

For its part at Paragraph 4, RML agreed to extend to all new purchasers the same rights, privileges and benefits extended to all other stockholders and property owners, subject to the by-laws, rules and regulations of the development. It also agreed to extend those privileges to the “grantees” of such original owners, meaning anyone who purchases the property from the original owner and anyone further in the chain of title. The Tripartite Agreement confirmed that the Certificate of Incorporation of RML provides that Class A Stock may not be sold, transferred or assigned to any person, firm or corporation who shall not be an owner of property in Ramapo Mountain Lakes and that only owners are eligible to hold shares of Class A stock in the corporation.

This Tripartite Agreement also has the corporation (RML) granting to the Club the use and control of the recreational facilities so long as the Club agrees to pay all of the taxes, keep the facilities in good repair and most significantly:

“Assess members on an equitable, annual or other basis and levy and notice such assessment to such members not later than May 15th, with the proviso that those not paid up in full by June 15th, may be barred from use of the facilities and from all participation in Club activities until payment in full has been made.”

The Tripartite Agreement provides at Paragraph 8, that in the event of default of the Club, the Club shall lose all right to use and control the recreational facilities and shall immediately turn

over to the corporation all recreational facilities.

The Tripartite Agreement provides at Paragraph 9, that membership is granted subject to the by-laws, rules and regulations of the Club to all purchasers, whether resident or non-resident, who hold equitable title to the property in the development under purchase contracts with the Developer.

The balance of the Tripartite Agreement dealt with certain responsibilities of the Developer in the form of financial credits and an agreement to provide certain repairs to the facilities during the transition period. It also allowed for the Developers continued use of a lumber yard and offices in the Clubhouse.

At Paragraph 11, the Tripartite Agreement specifically stated that the Developer would, prior to July 1, 1954, provide notice to all new purchasers of the organization of the Club and the assessment of dues as well as the policy for delinquency.

Finally, at Paragraph 18, the Tripartite Agreement states as follows:

“The provisions of this agreement shall always be construed as covenants, and as such shall run with the land for the joint benefit of all present and future property owners, their heirs, executor, administrators, assigns and grantees, it being distinctly understood and agreed that this contract is entered into for the benefit of all such present and future property owners and stockholders of the Corporation and their grantees. The Developer agrees to effect recording of this instrument for the benefit of all parties.”

Title Searches

As per your request, we have obtained chain of title searches for various properties.

In each of the chain of titles searches that we reviewed, an identical or nearly identical initial deed from the National House & Farm Association, Inc. to the original purchaser of each respective lot was found. The range of dates for these deeds was 1949 to 1953, which coincides with the time that the Developer was sub-dividing and selling the original lots. For purposes of our discussion, we will assume that the identical deed was therefore used for transfer to each of

the original purchasers from the Developer and accordingly is referred to as the “master deed.”

The master deed contained the declaration of fourteen (14) covenants and restrictions. These covenants were of customary form and included covenants that the premises must be used for residential purposes, that building plans must be approved by the Developer, that there were setback requirements from the shoreline, that there were restrictions on the operation of business, nuisance or anything noxious, that there were obligations for sewer and garbage on the purchaser, reservation of right to the Developer for utilities, streets, drainage, etc.

It is significant to note that the restrictive covenants did not include any mention of membership in the stock corporation, but only purported to transfer the real property itself. Further, the restrictive covenants listed in Paragraph Fourteenth provide that they shall “run with the land and continue in force and effect until 1960 when they shall cease and terminate.” This provision is not unusual and is consistent with the plan of the Developers to turn over the management of the facilities and the entire community to a private association of property owners and to terminate all of the Developers’ rights to control the development after the development had been completed.

Analysis

In summary, Ramapo Mountain Lakes was originally formed by a Developer who purchased a large tract of land, sub-divided it into individual lots and sold those lots to the original purchasers. Included in the Developer’s original plan were common recreational facilities such as the lakes, clubhouse, swimming pool and tennis courts. It was the Developer’s stated intent that each person who took title to an individual lot would also have an ownership interest in the common property or recreational facilities. In order to accomplish this, the Developer issued shares of stock to each of the original purchasers. The shares of stock were issued from the Ramapo Mountain Lakes, Inc. A separate corporation, the Ramapo Mountain Lakes Country Club, was formed for the purpose of managing the social and recreational activities and for operating and maintaining the facilities.

The Developer originally issued thirty (30) shares of Class B Voting Stock to its principals (the

three Kline brothers) but at the time of the transfer of all of the facilities over to RML, the Developer cancelled thirty (30) shares of Class B Voting Stock and vested voting power into the individual property owners through their ownership of Class A Stock.

The Tripartite Agreement, which summarized the Developer's original intent regarding the property, also vested certain responsibilities in the Club to assess the members. The Tripartite Agreement specifically stated that Class A Stock was to be held exclusively by property owners in RML and was not to be sold, transferred or assigned to any person who was not a property owner in RML. The Developer made an effort to tie this obligation to the individual properties by stating that the provisions of the Tripartite Agreement were to be construed as covenants running with the land. Significantly, the Developer agreed to affect the recording of this instrument for the benefit of all parties, and we have confirmed that the recording was accomplished.

While the intent of the Developer is clear from a review of the Agreement, the execution of the plan is not quite as clear. The transfer of property to each of the individual purchasers does not tie the property owner into any obligation to an association or club, nor does it impart any rights to the common properties, as the Developer made it clear that his intent was to issue shares of stock in the corporation in order to accomplish the rights and privileges of each property owner to be a member of the Club and have use of the common properties. The Tripartite Agreement specifically states that corporate and stock books were to be turned over to RML at the completion of the development. It is likely that those books contain a register of the original stock certificates.

Ramapo Mountain Lakes was formed initially as a summer colony likely for residents of New York City who wanted a place to escape the summer heat. The development of RML and other traditional lake associations and homeowners associations in New Jersey predated the New Jersey Condominium Law. As there was no enabling statute for the formation of these communities, they were each formed differently. However, most followed a similar pattern. A developer purchased a large tract of land and sub-divided it into individual lots. The sub-division was approved by the municipality through a system of filed maps. The developer

retained the lake and other common properties for the benefit of all purchasers in the development. Typically a non-profit corporation organized under the provisions of N.J.S.A. 15A1-1 et seq. was formed by the developer and at the completion of the development, the common properties were transferred by deed from the developer to a Club or Association. The Club or Association was then charged with the care and maintenance of all commonly held property.

It is in this respect that RML digresses from the traditional formation of lake associations in New Jersey. The restrictive covenants are not through the deeds, but rather through stock ownership. Therefore, the issue becomes whether the restrictive covenants which bind stockholders in RML Corporation provided sufficient notice to purchasers of property in RML of their obligations for membership and their subjection to assessment.

While the development of RML is unique, it is not without precedent. White Meadow Lake in Rockaway Township, Morris County, was also developed by National House & Farms Association, Inc. and the Kline family. In a manner similar to the development of RML, White Meadow Lake formed a Country Club to own the lake and other common properties and the Developer transferred the properties to the Country Club, where the Class A stockholders who were also property owners became the only ones with voting rights. The Class B Stock, which had been issued to the Developer, was cancelled. However, as stock would not issue until a purchase price was paid in full, only about one of every four property owners actually possessed a Class A Stock certificate.

In a manner nearly identical to that of RML, a Tripartite Agreement was signed between the National House & Farm Association, Inc., the White Meadow Lake Country Club and the White Meadow Lake Property Owners Association which transferred all the common property to the Association and eliminated the voting rights of the Developer. White Meadow Lake has apparently been challenged over the years regarding its right to collect dues from all property owners. In White Meadow Lake Property Owners Association, Inc. v. Thorlakson, No. A-1117-67 (App. Div. 1968) (slip op 1-4), an unpublished Appellate Division case, the trial judge initially ruled that the obligation to pay dues was unenforceable for two reasons: (1) the

Association had reserved a right to accept or reject applicants for membership creating a potential vehicle for discrimination, and (2) the obligation to pay dues was too vague and indefinite to be enforced.

The ruling was appealed, and the Appellate Division reversed finding that “It is clear from the contract of sale, the deed to the defendant, the Tripartite Agreement and the deed executed in conformity therewith, that anyone purchasing property in the development automatically becomes a member of the Country Club and the Association and was obligated to pay a proportionate share of the maintenance charges for the recreational facilities.” The Appellate Division further found that there was no evidence of discrimination in White Meadow Lake and that there was no functioning membership committee because the only qualifications for membership in the Association was that the person be an owner of property in White Meadow Lake development. The Appellate Division noted that White Meadow Lake amended its documents to reflect that a purchaser of any home or lot in the development shall become a member of the Association. Finally, the Appellate Division stated: “The White Meadow Lake Country Club and Property Owners Association is a typical development which exists in thousands of localities in this country. It is undisputed the dues assessed against Association members represent a pro-rating of the expenses of maintenance of the recreational facilities. Defendant is free to sell and convey property to anyone he chooses, the only restriction being that the new owner will become liable for all past dues and future dues assessments. We find no legal infirmity in this Club plan.”