

DISTRICT COURT, ADAMS COUNTY, COLORADO Adams County Justice Center 1100 Judicial Center Drive Brighton, Colorado 80601 (303) 659-1161	DATE FILED May 27, 2025 6:26 PM CASE NUMBER: 2023CV30537
Plaintiffs: EDIE APKE, et al. v. Defendants: TODD CREEK FARMS HOMEOWNERS ASSOCIATION, et al.	
↑ COURT USE ONLY ↑ Case Number: 23CV30537 Division: C	
ORDER RE: MOTION FOR TEMPORARY RESTRAINING ORDER	

This matter comes before the Court on Plaintiffs’ Motion for Temporary Restraining Order (the “Motion”) against Defendant Todd Creek Farms Homeowners’ Association (the “HOA”). Having reviewed the Motion, the exhibits attached thereto, and the court file, the Court finds and orders as follows:

BACKGROUND

On April 14, 2023, Plaintiffs filed their Verified Complaint asserting derivative claims against the Todd Creek Farms Homeowners Association, a non-profit corporation (the “Association”), and each member of the Association’s board of directors in their official capacity (together with the Association, the “Defendants”).¹ At the time of the Verified Complaint, each Plaintiff was a homeowner and voting member of the Association. Plaintiffs have asserted various claims for breach of fiduciary duty, breach of contract, and violation of the Colorado Common Interest Ownership Act (“CCIOA”).

¹ Plaintiffs have since amended the Verified Complaint.

Defendants moved to dismiss the derivative claims under C.R.C.P. 12(b) on the grounds that Plaintiffs lacked standing and did not comply with the requirements in C.R.C.P. 23.1. After briefing, the Court denied the motion to dismiss, but dismissed the eighth claim for relief under CCIOA to the extent it would result in double recovery. After some discovery in the case, Defendants moved for summary judgment again challenging Plaintiffs standing under C.R.C.P. 23.1. After briefing and a hearing, the Court denied the motion for summary judgment finding that Plaintiffs demonstrated that they adequately and fairly represent the interests of similarly situated members.

While the motion for summary judgment was pending, Defendants refused to respond to any discovery requests served by Plaintiffs. After the Court's ruling on the motion for summary judgment, the case was reset for trial and discovery was to continue. Plaintiffs have since moved to again amend the complaint in the case, which is pending before the Court.

Through their Motion, Plaintiffs seek a temporary restraining order to enjoin Defendant HOA from assessing fees against Plaintiffs related to the defense of this derivative action and from attempting to collect those fees by, among other things, placing liens against Plaintiffs' properties. Plaintiffs allege that Defendants have assessed fees against 20 of the 21 Plaintiffs in this case that include only amounts Defendants have paid to defend this lawsuit. To support this claim, Plaintiffs have provided a screenshot of one Plaintiff's account for the Todd Creek HOA and a copy of a newsletter issued by the HOA that it has assessed fees and placed liens on Plaintiffs' properties due to the growing legal defense fees.

LEGAL STANDARD

A temporary restraining order ("TRO") may be granted without written or oral notice to the adverse party only if: (1) It clearly appears from specific facts shown by affidavit or by the

verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. C.R.C.P. 65 (b). The purpose of a TRO is to prevent “immediate and irreparable harm” to one of the parties in a lawsuit. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). Due to the powerful nature of TROs, they are short in duration (no more than ten days), and may only be issued upon a strong showing that specific immediate and irreparable harm will occur absent the order. *City of Golden*, 83 P.3d at 96.

ANALYSIS AND ORDER

The Court finds that Plaintiffs have demonstrated that they will suffer immediate and irreparable injury absent a temporary restraining order. Plaintiffs have sufficiently alleged and demonstrated that Defendants are improperly and unlawfully assessing the costs of defending this derivative action against Plaintiffs. Litigation-related expenses cannot be assessed against a party except as permitted by law. *See Steel v. Law*, 78 P.3d 1124, 1129 (Colo. App. 2003) (costs and attorneys’ fees incurred during litigation or as a result of an opposing party’s conduct generally are not damages). More importantly, such costs and fees may not be charged against an opposing party without a court order.

The Court is not persuaded that C.R.S. § 38-33.3-302 (1)(k)(i) serves to mitigate or support Defendants’ actions. Section 38-33.3-302 permits an association to recover reasonable attorneys’ fees and other legal costs for collection of assessments or other legal actions. According to the plain language of the statute, the attorneys’ fees must be incurred for collection of assessments or other actions to enforce the power of the association. Neither of those apply

here. The HOA is not seeking to collect on a past due assessment or enforce a provision in its declaration, bylaws, or under Colorado law. Rather, as stated in the HOA's newsletter, the purpose of the assessment at issue is to collect the litigation costs incurred by the HOA in this lawsuit directly from the named Plaintiffs. As a matter of law, the HOA is not legally entitled to recover its attorneys' fees or other costs incurred as part of this lawsuit absent an order of the Court.

While the Court has considered whether Plaintiffs would be able to seek legal remedies for any amounts allegedly unlawfully collected, the Court finds that Plaintiffs have sufficiently asserted that the alleged unlawful assessment and liens against Plaintiffs' properties will result in immediate and irreparable damage to Plaintiffs' credit scores, implicate potential defaults on any existing mortgage loans, and interfere with Plaintiffs' cash accounts.

CONCLUSION

For the reasons set forth above, the Court GRANTS the Motion for Temporary Restraining Order. The HOA is enjoined from assessing any fees, costs or other amounts that relate to this lawsuit against the Plaintiffs absent further order of the Court. The HOA shall remove the assessment at issue in Plaintiffs' Motion from each Plaintiff's account and cease any attempt to collect the assessment. To the extent the HOA received any payments on the assessment at issue, the HOA shall credit the particular Plaintiff's account until the Court can hear the matter in order to maintain the status quo.

Pursuant to C.R.C.P. 65 (b), this temporary restraining order shall remain in effect for 14 days or until the Court can hear Plaintiffs' Motion for Preliminary Injunction. Plaintiffs' counsel shall contact the division clerk within 3 calendar days to obtain dates on which to set a hearing on the motion for preliminary injunction and shall confer with counsel for the HOA to set the

hearing. Based on the Court's schedule, the Court would prefer to set the matter for the week of June 2, 2025.

DATED: May 27, 2025.

BY THE COURT:

s/ Patrick Pugh
District Court Judge