

**STATE OF MICHIGAN
IN THE 34TH CIRCUIT COURT FOR THE COUNTY OF ROSCOMMON**

PATRICK C. SPRINGSTEAD,
Plaintiff,

vs.

File No. 16-722816 - NZ

HIGGINS LAKE PROPERTY OWNERS ASSOCIATION,
A Michigan Non-Profit Corporation,
Defendant.

HESS, HESS & DANIEL, P.C.
BY: SCOTT L. HESS (P37379)
Attorneys for Plaintiff
319 Lake Street, P.O. Box 726
Roscommon, MI 48653
989-275-5184

STATE OF MICHIGAN
COUNTY OF ROSCOMMON
34TH CIRCUIT COURT
MICHELLE M. STEPHENSON
COUNTY CLERK
2016 JAN 8 PM 1 46

There is no civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint previously filed in the 34th Circuit Court.

COMPLAINT

NOW COMES Plaintiff PATRICK C. SPRINGSTEAD, by and through his attorneys, HESS, HESS & DANIEL, P.C. by SCOTT L. HESS and for his Complaint states as follows:

General Allegations

1. Plaintiff is a resident of Roscommon County, Michigan.
2. Defendant HIGGINS LAKE PROPERTY OWNERS ASSOCIATION (hereinafter "HLPOA") is a Michigan Non-Profit Corporation, with a principal place of business located at 308B Lake Street, Roscommon County, MI.
3. The incident complained of occurred in Roscommon County.
4. The amount in controversy exceeds \$25,000, exclusive of interest and costs.
5. That the original Articles of Incorporation for the HLPOA were filed with the State of Michigan on February 15, 1940. Restated Articles were filed August 19, 2015 and provided the corporation was formed on a nonstock and membership basis, and that the purpose for which the corporation was formed was "to promote the general welfare of the owners of property on the shores of Higgins Lake, Roscommon County, Michigan".

HESS, HESS & DANIEL, P.C.

319 LAKE STREET / P.O. BOX 726 • ROSCOMMON, MICHIGAN 48653 • (989) 275-5184 • FAX (989) 275-4229

6. That effective July 15, 2006, and until July 18, 2014, the Bylaws for the HLPOA provided, among other things,

a) Article IV – Headquarters, Section 4.1. “The Board of Directors shall approve the location of the headquarters of the Association and the establishment and location of any additional offices of the Association.”

b) Article VI – Governing Body, Section 6.1 Board of Directors, Subsection a. “The Board of Directors, consisting of a minimum of eleven (11) members, shall be vested with the responsibility and authority to manage the affairs, funds, property and finances of the Association and may, from time to time, adopt rules governing the operation of the Association, its Officers, Committees and employees.”

c) Article VIII – Committees, Section 8.2. “An Audit Committee, consisting of three (3) members of the Board of Directors, shall be appointed by the President to audit the books of the Treasurer and any other Association records concerning financial matters.”

d) Article IX Financial, Section 9.5. “No expense shall be incurred by a Director, Officer, Committee Chairman, or other Agent on behalf of the Association except as authorized by the Board of Directors”.

7. That pursuant to the aforesaid authority the HLPOA, through its Board of Directors, entered into a Lease for the rental of commercial office space from January 1, 2006 through December 31, 2006 in a building located at 207 Terrace, Roscommon, Michigan, which property was owned by Plaintiff. The Lease was executed on behalf of HLPOA by Stanley Cooke and Katheryn Bangs the Treasurer and Secretary, respectively, of the HLPOA during 2005. A copy of the initial lease is attached hereto as **Exhibit A** and incorporated herein by reference as though fully set forth.

8. The Higgins Lake Foundation (HLF) also rented a portion of the building pursuant to a lease which was essentially identical to the lease between Plaintiff and Defendant.

9. That the initial Lease was prepared by William L. Carey, of Carey & Jaskowski, PLLC, and the parties thereafter executed renewal leases with identical versions each and every year thereafter through the calendar year of 2014. Contained within each lease was the following provision, “The Tenant hereby hires said premises for the term aforesaid, and covenants...

3. *To keep the premises in accordance with all police, sanitary and other regulations imposed by any government authority.”*

10. That in 2012 and/or 2013, plumbing issues began to develop requiring the tenants to pay to have the pipes snaked out. After the last service, the Board of Directors of each tenant organization elected to have the sewer pipes replaced at a cost of \$1,290 each, consistent with paragraph 3 of the lease.

11. That both the HLPOA and its Audit Committee approved the Treasurer's Report during that time frame, and the full membership of the HLPOA approved the report (which included the sewer pipe repairs) at the annual meeting in July 2014. The HLF Board of Directors also approved the expenditure.

12. That at the HLPOA July, 2014 Annual Meeting, it's members also elected a new slate of board members.

13. That at HLPOA October 13, 2014 Board of Director's meeting, the Board discussed the aforesaid lease arrangement and voted to form a committee of 2 or more Board members to review the office situation and report back to the Board.

14. That at HLPOA November 10, 2014 Board of Director's meeting, the Board received an office committee update which recommended that rental properties be considered. The Committee was directed to bring a best offer for two properties back to the board for consideration. The office lease was also discussed.

15. That at HLPOA December 8, 2014 Board of Director's meeting, the board discussed the \$1,290 sewer bill **paid in 2013** and reviewed the lease terms for the January 1, 2014 to December 31, 2014 Lease a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference as though fully set forth herein.

16. That the HLPOA Board of Directors chose to ignore the prior approvals outlined above by the predecessor Board of Directors. After a discussion, the President of HLPOA, Jim Vondale, moved "that Pat Springstead reimburse the HLPOA for the monies paid for the sewer bill". The motion was seconded by Chuck Brick. It was opposed by Pat Springstead and Marv Bolton. The motion by the Board of Directors passed. (See minutes attached as **Exhibit C** incorporated by reference as though fully set forth herein.)

17. The minutes for the aforesaid December 8, 2014 meeting of HLPOA were approved at the January 12, 2015 Board of Directors meeting, which minutes have been published on the HLPOA website.

18. Plaintiff asserts the minutes falsely infer Plaintiff engaged in some wrongdoing relative to the sewer repairs such that he inappropriately required HLPOA to pay the cost of the repairs thus damaging the reputation of Mr. Springstead within the community.

19. The issue was further discussed at the January 12, 2015, meeting during which Plaintiff provided the HLPOA Board with an opinion letter from attorney Christopher Schulz of Cummings McClory, which opinion stated the HLPOA's payment of the sewer maintenance and/or repairs was in fact that organizations responsibility under the lease. The matter was tabled and has not been resolved to this date.

20. That Plaintiff through counsel has demanded the HLPOA Board of Directors to retract the false statement by rescinding its December 8, 2014 action with respect to the sewer repairs and formally apologize to Mr. Springstead for the disparaging inferences with the apology published in the same format as the defamatory comments were made on its website. (See **Exhibit B** attached hereto and incorporated herein by reference as though fully set forth herein).

21. That Defendant has refused to provide the aforesaid retraction.

Count I -Defamation

22. Plaintiffs incorporate by reference paragraphs 1 through 21 as though fully set forth.

23. The accusations inferring Plaintiff inappropriately required HLPOA to pay the cost of the sewer repairs are false.

24. Defendant HLPOA published the remarks on its website to third parties with knowledge of the falsity of the statements or in reckless disregard of their truth or falsity.

25. The publication was not privileged.

26. The publication of these remarks has resulted in damage to Plaintiffs' reputation in the community and economic loss, including, but not limited to, the following:

- a. emotional distress
- b. humiliation, mortification, and embarrassment
- c. sleeplessness and anxiety
- d. other damages that may arise during the course of discovery and the course of this trial

WHEREFORE, PLAINTIFF respectfully requests that this court enter judgment in his favor against Defendant in whatever amount Plaintiff is found to be entitled in excess of \$25,000, together with costs and interest.

Count II - Intentional Infliction of Emotional Distress

27. Plaintiff incorporates by reference paragraphs 1 through 26.

28. Defendant's conduct as outlined above was intentional.

29. Defendant's conduct as outlined above was extreme, outrageous, and of such character as not to be tolerated by a civilized society.

30. Defendant's conduct as outlined above was for an ulterior motive or purpose.

31. Defendant's conduct resulted in severe and serious emotional distress.

32. As a direct and proximate result of Defendant's conduct, Plaintiff has been damaged in the manner outlined above.

WHEREFORE, PLAINTIFF respectfully request that this court enter judgment in his favor against Defendant in whatever amount Plaintiff is found to be entitled in excess of \$25,000, together with costs and interest.

I declare the above to be true to the best of my knowledge, information and belief.

Dated:

January 5th 2014

Patrick C. Springstead
PATRICK C. SPRINGSTEAD

HESS, HESS & DANIEL, P.C.

Scott L. Hess
BY: SCOTT L. HESS (P37379)
Attorneys for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury.

HESS, HESS & DANIEL, P.C.

Dated:

1/8/14

Scott L. Hess
BY: SCOTT L. HESS (P37379)
Attorneys for Plaintiff