

**IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI
CIRCUIT DIVISION**

GARY BALL,)
 Petitioner,)
)
 v.)
)
 TREASURE LAKE R.V. RESORT)
 CAMPING CLUB, INC., a Missouri)
 Not-For-Profit Corporation)
 Serve: Ben Upp, Registered Agent)
 1355 E. Bradford Pkwy, Suite A)
 Springfield, MO 65804)
 Respondent.)

Case No. _____

PETITION

COMES NOW Petitioner Gary Ball, by and through counsel, and for his Petition against Treasure Lake R.V. Resort Camping Club, Inc. (herein, "Treasure Lake") states as follows:

General Allegations

1. Treasure Lake is a Missouri not-for-profit mutual benefit corporation organized pursuant to Chapter 355, RSMo.
2. Treasure Lake owns and operates a recreational vehicle resort in Taney County, Missouri, located at 1 Treasure Lake Drive, Branson, MO 65616.
3. The Registered Agent for Treasure Lake is Ben Upp, 1355 E. Bradford Parkway, Suite A, Springfield, MO 65804.
4. Petitioner, Gary Ball, is an individual residing at Box 104934, Jefferson City, MO 65673. Mr. Ball is a member of Treasure Lake.
5. Petitioner was duly elected to a term on the Treasure Lake Board of Directors on or about October of 2006. Mr. Ball's term was to be for a period of three (3) years ending on or about October of 2009.

6. At the regular January meeting of the Board of Directors of Treasure Lake, the Board of Directors purportedly took a vote to remove Gary Ball as a member of the Board of Directors (herein, the "Vote").

7. No notice was provided to Mr. Ball prior to the January meeting, nor was any notice of the Vote placed on the Agenda before the meeting.

8. The Vote apparently took place in secret. No discussion of the Vote was held in open session. Further, the Vote does not appear on the official minutes for the January meeting of the Board of Directors.

9. On or about February 9, 2009, a Rules Violation Committee (comprised of two board members and five non-board members) voted in secret to remove Mr. Ball from the Board of Directors.

10. Mr. Ball was informed by the Rules Violation Committee that – in addition to removal from the Board of Directors – his membership benefits would be suspended and he would be banned from the resort for a period of six (6) months.

11. At a phone conference held on or about February 18, 2009, the remaining Board of Directors voted to fill the purported vacancy on the Board of Directors.

12. To date, Treasure Lake has not reported the above-listed actions to its membership, nor has it published which Board Members acted to remove Gary Ball from the Board of Directors or to fill the purported vacancy on the Board of Directors.

Count I – Declaratory Judgment

13. Petitioner incorporates by reference each and every paragraph of his General Allegations as though fully set forth herein.

14. Petitioner is an owner/member of Treasure Lake and was duly elected to the Board of Directors by the membership on or in October of 2006 for a three (3) year term.

15. Article V, Section 11 of the Treasure Lake Bylaws states that:

The entire Board of Directors may be removed, with or without cause, by vote of a majority of the members of the Club then entitled to vote at an election of Directors. If less than the entire Board is to be removed, no one of the Directors may be removed if the votes cast for his removal would be insufficient to elect him, if then cumulatively voted in an election of the entire Board of Directors. A member of the Board of Directors may be removed for cause by the majority vote of the remaining Directors. Cause shall be defined as neglect of duty and shall include a Director's absence without notice, just cause or excuse from three meetings of the Board of Directors in any calendar year.

16. Section 355.346 R.S.Mo. provides a right to remove Directors by vote of the membership or by vote of the Board of Directors for missing a specified number of meetings. Section 355.356 R.S.Mo. allows for removal of a director by Court action. The Vote does not comply with any of the removal provisions contained in Missouri law.

17. At least three (3) directors, including Petitioner, were not informed that action would be taken to remove Mr. Ball as a director at the January meeting. These directors did not participate in the Vote.

18. Treasure Lake has failed to meet the requirements of Missouri law and/or its own Bylaws in its attempts to remove Petitioner from the Board of Directors.

19. As interpreted by Treasure Lake, Article V, Section 11 of their bylaws violates the minimum protections afforded members and member-elected Directors by Chapter 355 R.S.Mo. and is therefor invalid.

20. Further, actions taken by the Rules Violation Committee to suspend Petitioner's membership rights and expel him from the resort are invalid for the following reasons:

- a. No rules violations were alleged or proven;

- b. Petitioner was not permitted to confront his accusers, nor were his accusers required to participate in the hearing. In other words, the committee simply relied on hearsay statements to create/find a violation;
- c. No notice of the alleged violation(s) were provided to Petitioner prior to the hearing;
- d. The allegations against Petitioner are fabricated and, even if proven, are not violations of any published rules or bylaws of Treasure Lake;
- e. Counsel for Petitioner was barred from attending or participating in the Rules Violation Committee hearing;
- f. Petitioner was not allowed to call witnesses who had gathered to testify on his behalf at the hearing.

21. Any actions taken by the Rules Violation Committee to remove Petitioner as a director is in violation of the Bylaws and/or Missouri law and are ultra vires, void, voidable and/or invalid.

22. Any actions taken by the Board of Directors in violation of the Bylaws and/or Missouri law are ultra vires, void, voidable and/or invalid.

23. A justiciable controversy exists between the parties regarding the ability of the Board of Directors of Treasure Lake to remove Gary Ball from the Board of Directors without vote of the membership.

24. Petitioner has a legally protectable interest at stake and this controversy is ripe for judicial resolution.

25. Petitioner has no adequate remedy at law. Injunctive relief is being requested.

WHEREFORE, Petitioner prays for this Court to enter its declaratory judgment that Gary Ball is still a director of Treasure Lake and that action taken to remove him as a director is void and of no effect, to enter its declaratory judgment that his suspension and expulsion from the resort is invalid, to declare that action to remove a director who had not missed three meetings without cause requires a vote of the members of Treasure Lake, for a preliminary injunction against Treasure Lake to prevent Respondent from enforcing any purported actions to removed Mr. Ball from the Board of Directors or suspend his membership privileges until such time as this Court can rule on these matters, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

POINTER LAW OFFICE, P.C.

By: 

David B. Pointer MO Bar No. 44498
Raymond M. Gross MO Bar No. 56438
P.O. Box 400 • 28 Court Square
Gainesville, Missouri 65655
(417) 679-2203
(417) 679-2213 (fax)
ATTORNEY FOR PETITIONER