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## Lake Lookover Prop. Owner's Ass'n v. Olsen, 791 A.2d 270 (N.J. Super. Ct. App. Div. 2002)

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**Lake Lookover Prop. Owner's Ass'n v. Olsen, 791 A.2d 270 (N.J. Super. Ct. App. Div. 2002)** (affirming the lower court's decision to allow the property owners' association to assess costs to property owners for repair to the lake's dam, since the property owners have easement rights to the lake).

Olsen and other property owners (collectively, "Property Owners") appealed from an order by the Superior Court of New Jersey that required them to share in the cost of repairing a dam on Lake Lookover in which the Property Owners have easement rights by virtue of the fact that their property surrounds the lake. Lake Lookover came into existence in the 1920s when developers dammed a watercourse and subdivided property around the lake into more than 100 home sites. With the conveyances of these properties came easement rights to the lake.

In 1994, New Jersey's Department of Environmental Protection ("DEP") filed suit against the development company of the Lake Lookover properties and the property owners' association ("Association") after attempting, since 1980, to direct the development company and the Association to repair the dam. After several years of negotiations between the DEP, the development company and the Association, all three parties executed an agreement, which the Superior Court of New Jersey approved on March 11, 1998. This agreement, in which the development company conveyed the Lake Lookover property to the Association, required all Property Owners to contribute to the costs of repairing the dam. The agreement directed the Association to inform all Property Owners of the agreement, which the Association did on June 22, 1998.

After reaching the agreement, the Property Owners failed to pay their apportioned cost of repair, and the Association filed suit. The court held that the Association had the authority to make the assessments in order to pay for the dam repair. The Property Owners appealed, making two primary arguments.

First, the Property Owners wanted to abandon their easement rights, which they argued, would eliminate their liability for assessed repair costs. The appellate court determined that since the Property Owners had enjoyed the rights of the easement, they could not simply terminate those rights now. The court reasoned that allowing the Property Owners to abandon their easement rights, and thus their payment obligations, would harm other property owners and the lake itself.

Second, the Property Owners claimed that the Association did not have the right to assume the role of assessing repair costs. Again, the court ruled in favor of the Association, and found that the Association had the right to make assessments against the Property Owners. The court stated that the Association maintained and repaired the lake facility since the beginning of the Lake Lookover community. Additionally, the Association took the lead role in the prior litigation

with the DEP and the development company without the disagreement of the Property Owners. These facts entitled the Association to assume the role of assessing repair costs.

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## OREGON

**Becker v. Pieper, 32 P.3d 912 (Ore. App. 2001)** (holding the trial court erred when it relieved respondents of a default judgment against them in suit for reformation of contract, declaration of water rights ownership, and money judgment for unjust enrichment).

Becker owned a ninety-acre parcel of land and the water rights to that land. He intended to transfer the water rights from that land to another parcel of land he owned before subdividing and selling the ninety-acre parcel. He initiated a water rights transfer with the Oregon Water Resources Department, and then sold the subdivided parcels. Becker's initiation of the water rights transfer did not suffice to sever the rights from the subdivided property. Unbeknownst to Becker at the time, he conveyed the property's water rights to Pieper and the other defendants (collectively "Pieper") because the contracts for the sale of the land did not contain any language reserving the water rights to Becker. When Becker learned of the unintentional transfer of water rights to Pieper, he asked all the new property owners for permission to complete the transfer of water rights as he intended. All refused.

Becker filed suit for reformation of his sale contracts to Pieper, declaration he was rightful owner of the water rights, and a money judgment against Pieper on the theory of unjust enrichment. Becker and Pieper entered into binding arbitration pursuant to the sale documents. The arbitrator found in Pieper's favor and entered judgment with the trial court accordingly. The trial court granted the non-defaulting defendants' motion to dismiss Becker's suit for reformation and declaratory judgment, and entered judgment in their favor.

Seven defendants, respondents in the appeal ("Pieper et. al"), failed to appear which resulted in Becker obtaining default judgments against them. In addition to the default judgment, Becker obtained an "Acknowledgement of Reservation of Water Right," ("Acknowledgement") from four of the defaulting defendants, which declared defendants "recognized and acknowledged that the conveyance by which they purchased their lots reserved the appurtenant water right to plaintiff."

Pieper et. al., upon learning of the favorable outcome of the non-defaulting defendants, including those who signed the Acknowledgement, attempted to re-enter the case by moving for relief from default judgments. The trial court granted that motion,