

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GWENDOLYN COLSTON,

Plaintiff,

v.

THE GREENS AT WYOMING
HOMEOWNERS ASSOCIATION,
SEAN MARCUS, THE GREENS
AT WYOMING, LLC, ALBERT
SALAME III, and KAMIL
SALAME,

Defendants.

C.A. No. 2024-0063-CDW

**ORDER RESOLVING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AGAINST
DEFENDANT THE GREENS AT WYOMING, LLC**

WHEREAS:

A. Plaintiff Gwendolyn Colston is a self-represented litigant and a homeowner in The Greens at Wyoming, a residential community in Wyoming, Delaware (“Community”). She filed the original complaint on January 24, 2024, asserting a variety of claims under State law relating to the management and condition of the Community and its homeowners association while under the control of the Community’s developer, The Greens at Wyoming, LLC (“Declarant”).¹

¹ See generally Compl., Dkt. 1 (“Complaint” and cited as “Compl.”). For a more detailed summary of the allegations and the claims, the court refers readers to its May 20, 2026 Report Denying Motions for Default Judgment and Motion to Dismiss. See Rpt. Denying Mots. for Default J. and Mot. to Dismiss, Dkt. 74 (“May 20 Report” and cited as “May 20 Rpt.”).

B. On September 3, 2025, Ms. Colston filed her Amended Verified Complaint, formally adding Declarant as a defendant.²

C. On February 10, 2026, Ms. Colston filed a motion for default judgment seeking, among other things, entry of default judgment against Declarant for failing to respond to the Amended Complaint.³

D. On May 20, the court issued a report recommending default judgment against the Declarant be denied because Ms. Colston had not served Declarant with a summons and the Amended Complaint.⁴

E. On June 24, the Register in Chancery issued a summons to Ms. Colston for Declarant.⁵

F. On July 15, Ms. Colston filed a certified mail return receipt showing service on Declarant on July 6.⁶

G. On July 31, Ms. Colston filed a second motion for default judgment against Declarant,⁷ seeking the following relief:

1. Under the Delaware Uniform Common Interest Ownership Act (“DUCIOA”),⁸ completion a five-year “forensic audit” of The Greens at Wyoming Homeowners Association, Inc. (“Homeowners Association”),

² See Am. Verified Compl., Dkt. 43 (“Amended Complaint” and cited as “Am. Compl.”).

³ Dkt. 71.

⁴ See May 20 Rpt. 16–17.

⁵ Dkt. 86.

⁶ Dkt. 88.

⁷ See Mot. to Request J. by Default, Dkt. 89 (“Motion”).

⁸ 25 *Del. C.* §§ 81-101 to 81-421.

paid for by the Declarant, before the Homeowners Association “transitions from developer control to homeowner control.”⁹

2. “Monetary and equitable relief for pond and ditch maintenance” under Delaware’s sediment and stormwater regulations, 7 *Del. Admin. C.* § 5101.¹⁰

3. Under DUCIOA, an order requiring Declarant to bring “all outstanding bills, including a previous street lights bill and all HOA taxes” current before the Homeowners Association “transitions from developer control to homeowner control.”¹¹

4. “A written explanation for an alleged loan” taken out against the Homeowners Association and “disclosure of the financial institution from which the loan was taken.”¹²

5. Under Section 220 of the Delaware General Corporation Law,¹³ “all financial documentation” for the Homeowners Association, including “expense reports, budgets, contracts, insurance policies, and 1099s for work done in the community, as well as all bank accounts and reserve funding.”¹⁴

⁹ Motion 3.

¹⁰ *Id.* 3–4.

¹¹ *Id.* 4.

¹² *Id.*

¹³ 8 *Del. C.* §§ 101–398 (“DGCL”).

¹⁴ Motion 4–5.

H. Ms. Colston included a proposed order with the Motion.¹⁵ The Proposed Order is based on the form available on the judicial branch’s forms webpage.¹⁶ In the Proposed Order, Ms. Colston asks the court to bind all of the defendants, not just Declarant, to the court’s decision on the Motion and grant “[a]ny other relief the court deems just and fair.”¹⁷

I. On August 7, the court entered a minute order directing Declarant to respond to the Motion by August 21. Declarant did not respond.¹⁸

J. “Under Court of Chancery Rule 55(b), when a party ‘has failed to appear, plead, or otherwise defend,’ the court may enter judgment for the moving party.”¹⁹ “The effect of a default [is] . . . to deem admitted all the well-pleaded facts in the complaint.”²⁰ But a movant “is only entitled to a default judgment if those facts, taken together, state a claim upon which relief can be granted.”²¹

K. “A default is not treated as an absolute confession by the defendant of his liability and of the plaintiff’s right to recover Although [they] may

¹⁵ See [Proposed] Order for Default J., Dkt. 89 (“Proposed Order”).

¹⁶ Compare Proposed Order, with CA Order for Default J., available online at <https://courts.delaware.gov/forms/download.aspx?id=172618> (last visited Oct. 5, 2026).

¹⁷ Proposed Order ¶¶ 2–3. The court cannot grant default judgment against the other defendants for the reasons explained in the May 20 Report. See May 20 Rpt. 14–18.

¹⁸ Individual defendants Sean Marcus, Albert Salame III, and Kamil Salame take no position on the Motion. See Dkt. 91.

¹⁹ *Moran v. Unation, Inc.*, 2025 WL 3706330, at *5 (Del. Ch. Dec. 22, 2025) (quoting *Hauspie v. Stonington P’rs, Inc.*, 945 A.2d 584, 586 (Del. 2008)).

²⁰ *Hauspie*, 945 A.2d at 586 (collecting cases).

²¹ *Id.* (citing *Nishimatsu Constr. Co. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)).

not challenge the sufficiency of the evidence, [the defendant] is entitled to contest the sufficiency of the complaint[.]”²² “[I]t remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit conclusions of law.”²³ In short, “a plaintiff cannot recover on claims that are legally insufficient.”²⁴

IT IS ORDERED, this 5th day of October, 2026, that:

1. The Motion is GRANTED IN PART and DENIED IN PART.
2. Declarant has failed to appear, plead, or otherwise defend after being served with process, so entry of a default judgment is appropriate under Court of Chancery Rule 55(b). But the court cannot grant the full relief against Declarant sought by Ms. Colston in the Motion because some claims on which she seeks relief fail to state claims on which the court can grant relief. The court addresses each claim in turn.
3. **DUCIOA.** Ms. Colston asserts claims under Sections 81-303(c), 81-303(e), 81-303(g), 81-307, and 81-308 of DUCIOA.²⁵ It does not appear that any of these sections of DUCIOA apply to the Community. Under Section 81-120 of DUCIOA, if the annual assessment for a planned community created before the effective date of DUCIOA is less than a specified amount, only Sections 81-105

²² *Id.* at 587 (quoting *Nishimatsu*, 515 F.2d at 1206).

²³ *Winklevoss Cap. Fund, LLC v. Shaw*, 2024 WL 3888757, at *9 n.127 (Del. Ch. Aug. 21, 2024) (quoting 10A WRIGHT & MILLER’S FEDERAL PRACTICE AND PROCEDURE § 2688.1 (4th ed. 2014)).

²⁴ *Id.* at *9 (citing *Hauspie*).

²⁵ *See* Mot. 3–4; Am. Compl. 3–4, 8, 13, 24.

through 81-107 of DUCIOA apply to that community, unless the community's declarations are amended to make the community subject to all or other parts of DUCIOA.²⁶ The Community was created in 2005,²⁷ four years before DUCIOA's effective date of September 30, 2009.²⁸ The annual dues for homeowners in the Community are \$300,²⁹ below DUCIOA's original, non-inflation-adjusted \$500 threshold.³⁰ And the Community's declarations were never amended to adopt the parts of DUCIOA the Amended Complaint asserts against Declarant.³¹ This means none of those sections of DUCIOA, including the audit requirement in Section 81-303(g), apply to the Community, so the Amended Complaint fails to state a claim against Declarant for violations of DUCIOA.

4. ***Delaware Insurance Code.*** Ms. Colston also relies on Sections 311 and 526 of the Insurance Code³² and a related regulation, 18 *Del. Admin. C.* § 301, for the forensic audit of the Homeowners Association.³³ These laws apply

²⁶ See 25 *Del. C.* § 81-120.

²⁷ See Am. Compl. 8; Compl. Ex. P (Certificate of Incorporation of The Greens at Wyo. Homeowners Ass'n, Inc.)

²⁸ 25 *Del. C.* § 81-116(b).

²⁹ See Am. Compl. 8; Compl. Ex. A.

³⁰ According to information Ms. Colston filed with the Complaint, the current threshold may exceed \$735 per year. See Compl. Ex. B (Feb. 13, 2023 email from the Common Interest Community Ombudsperson to Ms. Colston) (stating annual assessment threshold is "currently \$735/yr until July 1").

³¹ See generally Compl. Ex. O.

³² 18 *Del. C.* §§ 311, 526.

³³ See Motion 3; Am. Compl. 3, 15–16, 24, 25.

to insurers,³⁴ and Declarant is not an insurer.³⁵ The Amended Complaint thus fails to state a claim against Declarant under the Insurance Code.

5. ***Administrative Procedures Act.*** Ms. Colston also relies on the Administrative Procedures Act, Title 29, Chapter 101 of the Code, as another basis for the forensic audit of the Homeowners Association.³⁶ She does not explain how it applies, and the court cannot discern on independent examination. The Administrative Procedures Act “standardize[s] the procedures and methods whereby certain state agencies exercise their statutory powers” and “specifies the manner and extent to which action by such agencies may be subjected to public comment and judicial review.”³⁷ It does not apply to or impose obligations on private entities like Declarant.³⁸ The Amended Complaint thus fails to state a claim against Declarant under the Administrative Procedures Act.

6. ***Pond and Ditch Maintenance.*** Ms. Colston seeks “[m]onetary and equitable relief” for pond and ditch maintenance under Delaware’s sediment

³⁴ See, e.g., 18 *Del. C.* § 526 (referring to obligations of “insurers”); 18 *Del. Admin. C.* § 301-2.1 (explaining the regulation requires “an annual audit of financial statements . . . of insurers”).

³⁵ See 18 *Del. C.* § 102(10) (defining “insurer” to include “every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance”); 18 *Del. Admin. C.* § 301-3.0 (defining “insurer” to mean “a licensed insurer” or “an authorized insurer” as defined in the Insurance Code).

³⁶ See Motion 3; Am. Compl. 3, 15–16, 24, 25.

³⁷ 29 *Del. C.* § 10101.

³⁸ See 29 *Del. C.* § 10102(1) (defining “agency” as a unit of state government authorized by law to make regulations, decide cases, or issue licenses).

and stormwater regulations, 7 *Del. Admin. C.* § 5101 (“Regulation”).³⁹ The Regulation requires an “Owner” of property to maintain stormwater management systems in accordance with the approved design and retain responsibility for maintenance until legally transferring ownership to another person.⁴⁰ Ms. Colston contends “[t]he original approved plan lists Albert Salame as the legal owner.”⁴¹ The revised record subdivision plan identifies the Declarant as the Owner.⁴² The Declarant remains responsible for maintaining the pond and ditches because no legal transfer occurred.⁴³ Section 5101-8.1 of the Regulation provides for private enforcement under Title 7, Section 4016 of the Delaware Code.⁴⁴ Relevant here, Section 4016 permits “any aggrieved person who suffers damage or is likely to suffer damage as a result of a violation

³⁹ See Am. Compl. 2–3, 25–26.

⁴⁰ 7 *Del. Admin. C.* §§ 5101-2.0, 5101-7.1.1 to 5101-7.2.1.

⁴¹ See Am. Compl. 3; Compl. Ex. N.

⁴² See Compl. Ex. N at 1 (identifying “Albert J. Salame, Greens at Wyoming, LLC” as “Owner/Developer”). Kent County property records support this. See Deed from Albert J. Salame to The Greens at Wyo., LLC, dated Jan. 9, 2004, recorded in the Off. of the Recorder of Deeds in and for Kent Cnty., in Deed Bk. 592, p. 140; see also Parcel Info., Map No. 7 20 09409 03 9300 000, <https://pride.kentcountytide.gov/propertyinfo/general/7%2020%2009409%2003%209300%20000/> (identifying Declarant as owner of the pond on Ninebark Drive) (last visited Oct. 5, 2026).

⁴³ See Ltr. from Sean B. Miller, Kent Conservation Dist. to Gary Bachyrycz, The Greens at Wyoming, LLC (July 11, 2022), Dkt. 20 Ex. MM (stating “[m]aintenance responsibility remains with the developer until construction is complete and the project closed out by the Kent Conservation District” and identifying required pond and other maintenance).

⁴⁴ See 7 *Del. Admin. C.* § 5101-8.1 (“Any action or failure to act, which violates any of the following: the provisions of this regulation, the requirements of an approved Sediment and Stormwater Management Plan, permit, Notice of Intent, construction review report, notice of violation, or the requirements of a final Operation and Maintenance Plan, may be subject to the provisions of any of the following: 7 Del. C. §§ 4012, 4013, 4015, and 4016; 7 Del. C. §§ 6005, 6013, and 6018.”).

or threatened violation” to seek injunctive relief from this court, and “[a]mong any other appropriate forms of relief” authorizes the court “to direct the violator to restore the affected land or water to its original condition.”⁴⁵ Taking the well-pleaded facts of the Amended Complaint as true, Ms. Colston is entitled to an order directing the Declarant to maintain properly the Community’s ponds and ditches. The court cannot grant Ms. Colston’s request for monetary relief because Title 7, Chapter 40 does not provide a private right of action for money damages for aggrieved persons.⁴⁶

7. ***Written Loan Explanation.*** The Amended Complaint and the Motion also seek an order directing the Declarant to provide a written explanation for an alleged \$44,329.59 loan taken out “against” the Homeowners Association.⁴⁷ In fact, it is unclear if there is such a loan—the Amended Complaint pleads defendant Sean Marcus provided inconsistent information on

⁴⁵ 7 Del. C. § 4016.

⁴⁶ See 7 Del. C. § 4015. Section 4015 does not expressly create a private right of action for aggrieved persons, nor is a private right of action implicit in its text. See *Brett v. Berkowitz*, 706 A.2d 509, 512 (Del. 1998) (“When a statute does not expressly create or deny a private remedy, the issue is whether or not the requisite legislative intent is implicit in the text, structure or purpose of the statute.”). The fines that can be imposed under Section 4015 are a penalty, not damages. See *Brookens v. State*, 466 A.2d 1218, 1219 (Del. 1983) (noting fines are a form of penalty) (quoting BLACK’S LAW DICTIONARY *Fine* (4th ed. 1951)); *Unbound P’rs Ltd. P’ship v. Invoy Hldgs Inc.*, 251 A.3d 1016, 1032 (Del. Super. 2021) (explaining a penalty is “punishment for default, rather than a measure of compensation for . . . breach”) (citation omitted); see also 36A C.J.S. *Fines* § 23 (“By the common law, all fines belong to the state.”); *Garvin v. Singh*, 2021 WL 6062013, at *1 (Del. Super. Dec. 21, 2021) (explaining that the imposition of environmental penalties under Title 7 is an exercise of the State’s sovereign power to protect public health, safety, and welfare); *Baker v. Del. Dep’t of Nat. Res. & Env’t Control*, 2015 WL 5971784, at *1 (Del. Super. Oct. 7, 2015) (explaining the Department of Natural Resources and Environmental Control has the duty to take actions and impose penalties to address violations of Title 7, Chapter 40).

⁴⁷ See Am. Compl. 4, 6, 8, 14, 16, 26; Motion 4.

this point.⁴⁸ Declarant having failed to respond to the Amended Complaint or the Motion, the court will order the Declarant to provide Ms. Colston with information regarding any such loan.

8. ***DGCL Section 220.*** Ms. Colston also asserts a claim against Declarant under Section 220 of the DGCL for the Homeowners Association's books and records.⁴⁹ I cannot grant default judgment on it for two reasons. First, Ms. Colston asserts it against the wrong party—the proper defendant in a Section 220 action is the corporation (the Homeowners Association), not the entity that controls it (the Declarant).⁵⁰ Second, Ms. Colston has not complied with the required formalities for inspecting a corporation's books and records under Section 220, which cannot be waived.⁵¹

* * *

9. For these reasons, the court grants default judgment against the Declarant, but relief is limited to Ms. Colston's claim regarding pond and ditch

⁴⁸ See Am. Compl. 14 (explaining the loan is included in the Homeowners Association's 2022 budget, but is shown as having a zero balance in the 2023 budget); *see also* Compl. Ex. K (documents relating to loan).

⁴⁹ See Am. Compl. 4, 26.

⁵⁰ *Gupta v. Safko*, 2025 WL 3269046, at *3 (Del. Ch. Nov. 21, 2025) (ORDER) (citing the version of 8 *Del. C.* § 220(c) applicable to demands to inspect books and records made before February 17, 2025); *see also Youngerwood v. AP Sulphur Spring LP*, 2026 WL 2654993, at *6 (Del. Ch. Sept. 9, 2026) (explaining that a books and records demand under Section 17-305 of the Delaware Limited Partnership Act differs from Section 220 “in a material respect” because “[i]t grants a limited partner the right to obtain information” directly from the partnership's general partner).

⁵¹ See *Barkan v. Exabeam, Inc.*, 2025 WL 1088821, at *6 (Del. Ch. Apr. 11, 2025) (“The form and manner requirements are not just ‘a precondition’ to inspection. They are ‘mandatory statutory procedural standing requirements.’ Failure to satisfy them is ‘statutorily fatal’ to both a stockholder's inspection demand and to a subsequent enforcement action.”) (citations omitted).

maintenance and her request for information about the alleged \$44,329.59 loan. The court orders Declarant to (1) comply with all applicable laws, rules, and regulations relating to the maintenance and cleanup of the Community's ponds and ditches, and (2) provide Ms. Colston with written confirmation if it ever took out a loan on behalf of the Homeowners Association and, if it did so, identify the date on which such loan was obtained, the terms of the loan, the name of the lender, and the loan's current status, and produce a copy of the loan agreement and any other papers within its possession, custody, or control relating to the loan.

10. This is a Report under Court of Chancery Rule 144(b)(1). It is not a Final Report under Rule 144(b)(2) because it does not conclude this action. Under Rule 144(c)(2)(A), any party who wishes to file exceptions to this Report may only do so after entry of the Final Report.

/s/ Christian Douglas Wright
Magistrate in Chancery