

District Court, Larimer County, Colorado 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 498-6239	FILED COMBINED COURTS CO Larimer County District Court 8th JD Filing Date: Dec 30 2011 1:29PM MST Filing ID: 4163522 Review Clerk: Stacy Pacheco SHERLYN K. SAMPSON CLERK OF COURT AUG 23 2011
REBECCA SUSAN LORENZ, Pro Se Plaintiff(s) v.	JIM ↑ COURT USE ONLY ↑
RETREAT LANDOWNERS ASSOCIATION, INC. (RLA), a Colorado Corporation Defendant(s).	Case No.: 2011 CV 990 Courtroom: 4C
ORDER RE: DEFENDANT'S MOTION TO REQUIRE JOINDER, OR IN THE ALTERNATIVE, DISMISSAL & PLAINTIFF'S MOTION FOR LIMITED EXPEDITED DISCLOSURE OF DEFENDANT'S DECLARATION DOCUMENT AND PROOF OF ITS MEMBERS	

This MATTER comes before the Court on Defendant's Motion to Require Joinder, or in the Alternative, Dismissal file July 5, 2011. Also addressed herein is Plaintiff's Motion for Limited Expedited Disclosure of Defendant's Declaration Document and Proof of its Members filed on July 28, 2011. Having read the two Motions; the opposing parties Responses and Replies; and being fully advised on the premises, the Court FINDS and ORDERS as follows:

Background

Plaintiff is a homeowner within Defendant Association and has brought various claims including negligent misrepresentation, intentional misrepresentation, breach of fiduciary duty, breach of statutory duty and harassment/defamation/emotional distress. The Plaintiff, among other things, seeks return of past assessment fees on the grounds

that the Defendant is without legal authority to operate. Central to the Plaintiff's claims is the assertion that the governing documents of the Defendant Association are invalid. Defendant asserts that because this Court's determination as to the Plaintiff's claims will shape the rights of property owners within the association, the remaining property owners are indispensable parties and must be joined in order to represent their interests.

Plaintiff has filed her Motion for Limited Expedited Disclosure of Defendant's Declaration Document and Proof of its Members. Plaintiff seeks the "Declaration of Covenants and Restrictions." Defendant asserts that it has provided the document in question. Included with Defendant's response as an exhibit was a letter to Plaintiff dated July 17, 2011 which outlines Plaintiff's various requests for documents and information and the action that the Defendant took in response to those requests.

Law & Analysis

The central raised in the Defendant's motion is whether the remaining property owners are indispensable parties. C.R.C.P. 19(a) states, in relevant part:

A person who is properly subject to service of process in the action shall be joined as a party in the action if: ... (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) [a]s a practical matter impair or impede his ability to protect that interest....

Whether a person or entity is indispensable turns on practical considerations particular to the facts of a case, including the nature of the party's claimed interest and the character of the claim for relief. Frazier v. Carter, 166 P.3d 193, 195 (Colo.App. 2007). If the interests of the parties before the court may be finally adjudicated without adversely affecting the rights of an absent person, the absent party need not be joined." Hygiene Fire Protection Dist. v. Board of County Com'rs of County, 205 P.3d 487, 489 (Colo.App. 2008) (citing Board of County Com'rs of County of San Miguel v. Roberts, 159 P.3d 800, 807 (Colo.App. 2006)).

The Plaintiff characterizes her claims as individual tort claims unique to her. Plaintiff's first claim is based on negligent misrepresentation. The Plaintiff alleges that Defendant is not a valid common interest community under the Colorado Common Interest Ownership Act but has represented itself as such. Prior to granting Plaintiff relief

on this claim, this Court would have to make a finding as to the validity of the Defendant Association's governing documents. Such a finding would also be required before addressing the Plaintiff's second claim of intentional misrepresentation.

The Plaintiff's third and fourth claims of breach of fiduciary duty and breach of statutory duty likewise would require a preliminary finding as to the validity of the Defendant Association's governing documents. The Plaintiff's fifth claim, which is mislabeled "fourth" claim, for harassment, defamation and emotional distress also alleges that the Defendant Association has no authority under the law to act. Again, this claim would also require a finding as to the validity of the Defendant Association's governing documents.

Despite the Plaintiff's assertion that the claims in her complaint are individual to her, it is apparent that the validity of Defendant Association's governing documents is an issue that could concern and affect all remaining property owners within the association. The Colorado Court of Appeals has addressed the issue of joinder of property owners within an association on a number of occasions. The Court of Appeals has upheld the joinder of homeowners where the scope of restrictive covenants was at issue. See Dunne v. Shenandoah Homeowners Ass'n, Inc., 12 P.3d 340 (Colo.App. 2000), *cert. denied* Nov. 14, 2000. The Court stated as follows:

While injury to the absent party is the most important factor in determining indispensability, other factors are recognized such as the danger of inconsistent decisions, avoidance of multiplicity of suits, and the reluctance of a court to render a decision which will not finally settle the controversy before it.

Id. at 344. Again, restrictive covenants were at issue in Good v. Bear Canyon Ranch Ass'n, Inc. and the Court of Appeals upheld the joinder of homeowners. 160 P.3d 251 (Colo.App. 2007), *cert. denied* Jun. 4, 2007. The Court stated that "all persons shall be made parties who have or claim any interest which would be affected by the declaration." Id. at 256. These principles were reaffirmed in Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Estates Owners, 214 P.3d 451 (Colo.App. 2008). Lastly, in Fairway Pines, the Court noted the Cruz-Cesario v. Don Carlos Mexican Foods decision in which the Court stated that "if there has been a failure to join an indispensable party, the court should not dismiss the action, but rather should join that necessary party or allow the

plaintiff an opportunity to do so. See Cruz-Cesario, 122 P.3d 1078, 1081 (Colo.App. 2005).

The above cases all dealt with the interpretation or application of covenants to property owners within an association. Notably, the interpretation and application of covenants is less grave in scope than what the Plaintiff seeks in this case. Here, the Plaintiff seeks a determination from this Court that the Defendant is not a valid association under Colorado law and therefore not legally authorized to act. Certainly, any finding by this Court as to the validity of the Association would have an impact on the remaining property owners.

The Court FINDS that claims raised by the Plaintiff implicate the interests of all property owners within the Association. Thus, the Court FINDS the remaining property owners to be indispensable parties.

With regard to Plaintiff's Motion for Limited Expedited Disclosure of Defendant's Declaration Document and Proof of its Members, the Court FINDS that Plaintiff has been provided the "Declaration of Covenants and Restrictions."

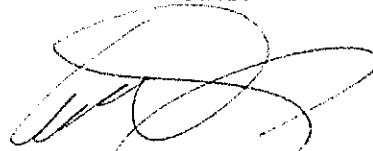
Order

Accordingly, the Court GRANTS the Defendant's Motion to Require Joinder. The Court ORDERS that the Plaintiff be allowed forty-five (45) days to amend her complaint and join the indispensable parties. In the event that Plaintiff fails to join the indispensable parties within forty-five (45) days, the Court will enter a separate order for the dismissal of the Second Amended Complaint.

Furthermore, the Court DENIES the Plaintiff's Motion for Limited Expedited Disclosure of Defendant's Declaration Document and Proof of its Members.

Dated: August 23, 2011

BY THE COURT:



DANIEL J. KAUP
District Court Judge

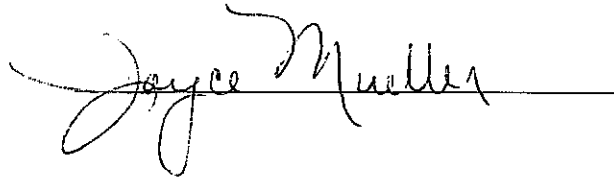
CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing ORDER was delivered to the attorney of record and parties appearing *pro se* in the following manner:

For counsel in Fort Collins who have agreed to such procedure, by placing said copy in the attorney pick up files located in the Larimer County Justice Center, 201 LaPorte Avenue, Suite 100, Fort Collins, Colorado.

For all other counsel and/or parties appearing *pro se*, by placing said copy in the United States Mail with the correct postage affixed thereon.

For all other counsel and/or parties appearing *pro se*, by efileing said copy through LexisNexis File & Serve.

A handwritten signature in cursive script, reading "Joyce Mueller", is written over a solid horizontal line.

cc:

Rebecca Susan Lorenz

William H. Short

Molly C. Lucas