

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

HIGH GABLES HOMEOWNERS
ASSOCIATION, INC.

Plaintiff,

v.

LARRY C. OLDHAM.

Defendant.

CIVIL ACTION FILE
NO. 05 CV 2005

MOTION FOR MANDATORY INJUNCTION

PLAINTIFF, HIGH GABLES HOMEOWNERS ASSOCIATION, INC., ("High Gables") files this Motion for a Mandatory Injunction against DEFENDANT, LARRY C. OLDHAM. ("Oldham") pursuant to O.C.G.A. § 9-11-65 and shows the Court as follows:

1.

High Gables is granted the authority to act in this present action by virtue of the authority more particularly described in the Declaration of Covenants and Restrictions Applicable to High Gables, recorded at Deed Book 1538, Page 769, *et seq.*, as amended at Deed Book 2876, Pages 548-554 (collectively the "Declaration"). The original Declaration is attached to the Complaint, as Exhibit "B." The Amendment is attached to the Complaint as Exhibit "C."

2.

In order to induce the purchase of residential lots within the tract, to maintain the tract as a desirable residential district, to protect said lots from improper use by future owners and to impose upon all the lots in the tract the same restrictions, High Gables promulgated and adopted the Declaration.

3.

Oldham owns a residence on a lot of real property located at 4250 High Gables East, Cumming, Georgia 30041, as noticed by the General Warranty Deed recorded at Deed Book 3094, Pages 721-722, attached to the Complaint as Exhibit "D."

4.

This Court has subject matter jurisdiction and venue over Oldham.

5.

The deed conveying the lot located at 4250 High Gables East, Cumming, Georgia 30041 to Oldham specifically states that the property is subject to all covenants and restrictions contained therein and of record, and all amendments thereto, relative to High Gables.

6.

Pursuant to Article V of the Declaration and as a consequence of owning the lot located at 4250 High Gables East, Cumming, Georgia 30041, Oldham became a member of High Gables.

7.

Since purchasing the lot located at 4250 High Gables East and becoming a member of High Gables, Oldham acknowledged, ratified, and publicized Oldham's membership by paying annual dues to High Gables.

8.

Under Article VI of the Declaration, High Gables is authorized and directed to make provisions for the improvement and maintenance of the common properties and to adopt rules and regulations for the use and enjoyment thereof.

9.

Pursuant to Article VI of the Declaration, High Gables adopted Standard Building and Design Specifications (“Specifications”) which, *inter alia*, mandate for each resident: 1) a poured concrete driveway; 2) a poured concrete sidewalk along the frontage of the property; 3) an approved mailbox and mailbox post assembly; and 4) finished entrance landscaping. A true and correct copy of the Specifications is attached to the Complaint as Exhibit “E.”

10.

No deviation from the Specifications is permitted absent specific approval in advance by the High Gables Architectural Control Committee (“ACC”) consistent with its judgment and consideration of the best interests of the membership as a whole.

11.

Before Plaintiff had filed its Complaint, Oldham has failed to pour a concrete driveway, failed to pour a concrete sidewalk along the frontage of the property, failed to erect an approved mailbox and post, and failed to place finished entrance landscaping on his property in direct and knowing violation of the Declaration and Specifications.

12.

Former President of High Gables, David Marchat, sent a letter dated June 20, 2005 to Oldham demanding he comply with the Specifications. *See* the Letter attached to the Complaint as Exhibit “F.” Despite this appeal, Oldham failed to take any remedial action.

13.

Thereafter, High Gable’s Property Management Company sent a certified letter dated August 15, 2005, demanding that Oldham take appropriate steps to conform his property to the

High Gables Specifications (a true and correct copy of which is attached to the Complaint as Exhibit "G"). Despite this formal demand, Oldham failed to take any remedial action.

14.

After Plaintiff filed its Complaint, Oldham installed a driveway and sidewalk.

15.

To date, however, Oldham's property remains out of compliance, and Oldham remains in continuing violation of Association rules.

16.

High Gables has no adequate remedy at law because Oldham's past conduct and ongoing disregard for Association Rules indicate that he will commit a continuing and/or repeated violation in the future. Any legal remedy available to High Gables would be inadequate. With a continuous violator more than one lawsuit might be required to vindicate High Gables' rights in damages. Injunctive relief, alternatively, would prevent a multiplicity of actions.

17.

Oldham's violation of Association Specifications, if continued, will cause High Gables and its members immediate irreparable injury because it constitutes a continued interference in the rights of High Gables and its members.

18.

High Gables is entitled to an injunctive order mandating that Oldham immediately: 1) install an approved mailbox and mailbox post assembly that conforms with High Gables Declarations and Specifications; and 2) complete finished entrance landscaping that conforms with High Gables Declarations and Specifications.

19.

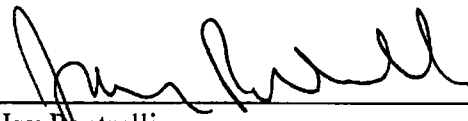
In support of this Motion, Plaintiff relies on its Brief in Support of Mandatory Injunction.

20.

Plaintiff, High Gables, requests that this Court enter a Mandatory Injunction and Order requiring Defendant Oldham to:

- a. Install an approved mailbox and mailbox post assembly that conforms with High Gables Declarations and Specifications
- b. Complete finished entrance landscaping that conforms with High Gables Declarations and Specifications;
- c. Pay Plaintiff's reasonable attorneys' fees;
- d. Pay costs; and
- e. Pay such other relief to which High Gables may be properly and justly entitled.

Respectfully submitted,



Jay Pontrelli
Georgia Bar No. 583513
Erin C. Dougherty
Georgia Bar No. 142579
COUNSEL FOR PLAINTIFF

STITES & HARBISON, PLLC
303 Peachtree Street, N.E.
2800 SunTrust Plaza
Atlanta, GA 30308
Telephone: (404) 739-8800
Facsimile: (404) 739-8870

CERTIFICATE OF SERVICE

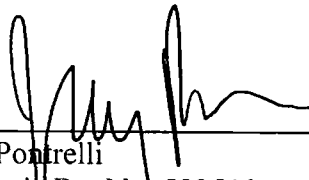
I hereby certify that a copy of the foregoing **MOTION FOR MANDATORY INJUNCTION** was served by first class mail, postage prepaid, upon:

Larry C. Oldham, Esq.
Oldham & Reece, LLP
416 Pirkle Ferry Road
Suite K-500
Cumming, GA 30040

Peter R. York, Esq.
Hawkins & Parnell, LLP
303 Peachtree Street, NE
4000 SunTrust Plaza
Atlanta, GA 30308-3243

This 10th day of January 2006.

STITES & HARBISON, PLLC
303 Peachtree Street, N.E.
2800 SunTrust Plaza
Atlanta, GA 30308
Telephone: (404) 739-8800
Facsimile: (404) 739-8870



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Georgia Bar No. 583513
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COUNSEL FOR PLAINTIFF