

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

HIGH GABLES HOMEOWNERS
ASSOCIATION, INC., et al.,

Plaintiffs,

v.

LARRY C. OLDHAM,

Defendant.

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CIVIL ACTION

FILE NO. 05 CV 2005

**HIGH GABLES HOMEOWNERS ASSOCIATION, INC.'S RESPONSE
TO DEFENDANT'S FIRST CONTINUING INTERROGATORIES**

COMES NOW High Gables Homeowners Association, Inc. ("High Gables"), Plaintiff/Defendant-in-Counterclaim in the above-captioned case, and files this Response to Defendant's First Continuing Interrogatories, showing this Court as follows:

PRELIMINARY OBJECTION

Plaintiff objects to the definitions and instructions contained in Defendant's First Interrogatories on the grounds of and to the extent that the same seeks information which is outside the scope of permissible discovery under O.C.G.A. § 9-11-26 et seq. Plaintiff further objects to the definitions and instructions to the extent that same seeks information which is protected from discovery by the attorney-client privilege and seeks information which constitutes attorney work product and/or materials prepared in anticipation of litigation and the required showing has not been made. Plaintiff further objects to the definitions and instructions on the grounds that the same are overly broad and unduly burdensome.

INTERROGATORIES

1.

Identify each person who has personal knowledge as to any facts or circumstances relevant to the issues involved in this Action, describing for each person generally the facts or circumstances about which such person has knowledge.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same is over broad and unduly burdensome and seeks information outside the scope of permissible discovery pursuant to O.C.G.A. § 9-11-26, et seq. Subject to and without waiving the foregoing objections, High Gables responds as follows:

1. High Gables HOA members.

2. Former and current High Gables Board members of HOA including but not limited to Bobby Lawson, David Marchat, Bob Clark, Brian Johnson, Linda Ebert, Jennifer Elwood, Mark Pagel, John Elliot, Mark Coussan, Mark Joiner, Cheri Curtis, Ron Lundy and Lisa Ann McDougald.

3. Mike Hill

4. Representatives from Peachtree Post and Box Company, Inc.

5. Morris Zablotsky

6. Defendant and his wife

7. Patrick Bryant

8. Spencer Strickland

2.

Identify any other legal action in which you have been involved, including the style of the case, court and the civil action file number, the name of the attorney or firm that represented you, the date of any depositions you may have given in such action, the outcome of the legal action, and the nature and subject matter of the legal action.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq. Subject to and without waiving the foregoing objection, High Gables responds as follows: High Gables Homeowners Association v. Jason & Lisa Creech, Superior Court of Forsyth County, Civil Action File No. 03 CV 0073, Jay Pontrelli and Peter York, none, settled, violation of covenants.

3.

Identify the Board for each fiscal year of Plaintiff starting with 2001.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same is over broad and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq. Subject to and without waiving the foregoing objections, High Gables responds that the following individuals were members of the Board in 2004-2005 and 2005-2006.

2004-2005: David Marchat, Jennifer Elwood, Ron Lundy, Bobby Lawson, Jr., Brian Johnson, Bob Clark and Mark Pagel.

2005-2006: Bob Clark, Linda Ebert, Cheri Curtis, Lisa Ann McDougald, Mark Joiner, John Elliott and Mark Coussan.

4.

Identify the HOA Members and numbers of HOA Members who attended the annual meetings for each year starting in 2001 through the meeting in September of 2005, including any rolls, minutes or other record of such meetings.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same is overbroad and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq. Subject to and without waiving the foregoing objections, High Gables has previously provided Defendant with copies of documents showing attendance at the annual meetings for 2004 and 2005.

5.

Other than the annual meetings of the HOA members in September of each year, identify any meetings of the HOA Members since 2001, specifying the approximate time, date and subject matter of each such meeting.

RESPONSE:

High Gables held a special meeting on June 10, 2003 at 6:30 p.m. addressing a special assessment and changes to the covenants.

6.

Is the Board able to transact business on behalf of the HOA Members if a quorum was not present at the annual meetings of the HOA Members or adjournments of those meetings?

RESPONSE:

High Gables responds that the By-laws of High Gables speak for themselves.

7.

Identify each investigation or inquiry you made regarding Defendant's Alleged Covenant Violations, whether with Defendant, another HOA Member, or otherwise, prior to filing the Action against Defendant.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which constitutes work product and/or materials prepared in anticipation of litigation. High Gables further objects to this Interrogatory on the grounds that the same invades the attorney/client privilege. Subject to and without waiving the foregoing objections, High Gables responds as follows:

In early June, 2005, High Gables became aware that Defendant had moved into his residence located at 4250 High Gables East in violation of the Covenants, including, but not limited to, related to landscaping and the driveway. A few days later, Bobby Lawson, a member of the Board of High Gables, spoke with Defendant about the violations and Defendant stated all violations would be complied with by the end of June, 2005. High Gables continued to receive complaints. On June 17, 2005, Defendant placed a pending order with Peachtree Post and Box to install a mailbox and post conforming to the neighborhood standard. On June 20, 2005, David Marchant, President of the Board of High Gables, sent a letter to Defendant regarding certain violations of the Covenants and confirming Defendant's intent to have the driveway paved by June 30, 2005, which was acceptable to the Board. Defendant did not respond to the June 20, 2005 letter. On or about July 29, 2005, Bob Clark made calls to the Forsyth County Engineering department to request an inspection of the Defendant's driveway in regard to mud, rocks, and run off into the public right of way in hopes that the County would assist in bringing the property into

compliance. Forty-Five (45) days lapsed after the initial letter was sent to Defendant and the violations of the Covenants remained. Accordingly, on August 15, 2005, a certified letter was sent by Heritage Property Management to Defendant again outlining Defendant's violations of the Covenants. The letter noted that the Board had the right to assess a fine in the amount of \$25.00 per day if the violation was not cured within fifteen (15) days. The letter further noted that if there were any circumstances in response to this issue that High Gables should be aware of, please contact the office. There was no response by Defendant either in writing or orally. Thereafter, and prior to the expiration of the fifteen days, David Marchat, President of the Board, spoke with Defendant who acknowledged receipt of the letters dated June 20, 2005 and August 15, 2005. When asked for a date of completion, Defendant could not provide a date certain and stated "I'm an attorney, do what you've got to do." On or about September 7, 2005, Bob Clark, newly elected President of the Board, received a call from Defendant and again no date certain for the remedy of the violations of the Covenants was provided. Mr. Clark related to Defendant that it would be a good idea to get the driveway and sidewalk completed. Another thirty (30) days lapsed without any action or response from Defendant. The lawsuit was filed on October 7, 2005.

8.

Was the decision to file the Action against Defendant made by the 2004-2005 Board or the 2005-2006 Board, or both such Boards?

RESPONSE:

Both.

9.

In connection with your decision to file the Action against Defendant, identify each person involved in the decision, the general content of the discussion at the time the decision was made, and the persons voting for and against the decision.

RESPONSE:

It was a unanimous decision by both Boards.

10.

Identify the conversations between Defendant or his wife and Officers and Directors regarding Defendant's Alleged Covenant Violations and whether all of the members of the Board were aware of the nature and content of those conversations at the time they voted to file the Action.

RESPONSE:

1. Bobby Lawson and Defendant
2. David Marchat and Defendant
3. Bob Clark and Defendant
4. Linda Ebert and Defendant's wife

Yes.

11.

Identify the content of any oral or written reports given by Bobby Lawson, David Marchat and Robert Clark to the Board, the Management Company, and/or Plaintiffs Counsel regarding their conversations with Defendant.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which constitutes work product and/or materials prepared in anticipation of litigation. High

Gables further objects to this Interrogatory on the grounds that the same seeks information protected by the attorney/client privilege. Subject to and without waiving the foregoing objections, see Response to Interrogatory No. 7.

12.

Why did you determine it was appropriate to attempt to impose fines against Defendant? If you contend those fines continue to accrue, on what grounds do you base that determination?

RESPONSE:

Fines were imposed against Defendant as a result of violations of the covenants by Defendant which were not cured after repeated requests and assurances by Defendant. Yes -- Defendant continues to violate the covenants.

13.

How many times has the Board met with Defendant about Defendant's Alleged Covenant Violations?

RESPONSE:

Board members of High Gables have spoken with Defendant about the Covenant violations on at least three occasions and two letters were written to him with no written response. High Gables' attorney has requested to meet with Defendant and he has refused.

14.

Identify each member of the Board who has physically visited or inspected the Oldham Property, including the extent of such physical visit or inspection, the approximate date and time of said visit, and whether Defendant or his family members were present at the time of the visitor inspection.

RESPONSE:

The Board members have occasionally driven by Defendant's residence during the

months leading up to filing the lawsuit, the exact dates of which are unknown.

15.

Identify whether you considered taking actions less costly and drastic than filing the Action against Defendant, what alternatives you considered, and your basis for concluding that such actions would not be effective.

RESPONSE:

High Gables gave notice to Defendant regarding his violations of the covenants in June, 2005 and refrained from taking any action against Defendant until October, 2005. The Board of Directors of High Gables gave Defendant every opportunity to bring his home into compliance. Despite his verbal promises to do so, none of the violations were remedied until after suit was filed. Demand letters have been written to and received by Defendant, who has not provided a single written response.

16.

Why did the Board and Plaintiffs Counsel file the Action without first contacting Defendant to discuss the issues?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which constitutes work product and/or materials prepared in anticipation of litigation. High Gables further objects to this Interrogatory on the grounds that the same seeks information protected by the attorney/client privilege. Subject to and without waiving the foregoing objections, High Gables responds that it contacted Defendant on at least three occasions via telephone and sent two letters to Defendant, who failed to respond in writing.

17.

Why did Plaintiffs Counsel elect not to extend Defendant the courtesy of acknowledging service?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

18.

Before undertaking the Action, did you discuss with Plaintiffs Counsel an estimate of how much the Action would cost Plaintiff, and what was that estimate?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which constitutes work product and/or materials prepared in anticipation of litigation. High Gables further objects to this Interrogatory on the grounds that the same seeks information protected by the attorney/client privilege.

19.

Identify any petition, questionnaire, correspondence, conversations or other inquiries you circulated or undertook with the HOA Members before filing the Action against Defendant.

RESPONSE:

None.

20.

Identify all grounds on which you contend Defendant is liable for your costs and attorney's fees, including, with particularity, all grounds for your contention that Defendant has (i) acted in bad faith; (ii) been stubbornly litigious; or (iii) caused you unnecessary trouble and expense.

RESPONSE:

Defendant was informed in writing of his violations of the Covenants in June, 2005 and again on August 15, 2005. Defendant was given every opportunity to remedy the violations. However, Defendant ignored these requests until the subject lawsuit was filed. Prior to the lawsuit being filed, Defendant told David Marchat “I’m an attorney, do what you have to do” and took a “so sue me” position. After the lawsuit was filed, Defendant has continued to violate the Covenants.

21.

After careful review of the Covenants, identify with particularity each violation of the Covenants that exist in the Neighborhood and explain the Action that Plaintiff or the Board has taken to correct those violations or the basis on which Plaintiff and/or the Board refuse to correct such violations.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

22.

Identify all portions of the Covenants upon which you rely for the filing of the Action against Defendant.

RESPONSE:

Declaration – Article V1, Sec. 2, A(ix).

Standard Building and Design Specifications – driveways, sidewalks, mailboxes.

23.

When do the Covenants or the Building and Design Specifications provide that a homeowner is required to each portion of the Defendant's Alleged Covenant Violations.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same is vague and ambiguous.

24.

Do you have specifications for the "neighborhood standard" mailbox specified in the Building and Design Specifications and are you required to provide a homeowner with those specifications upon request?

RESPONSE:

Defendant is aware of the "neighborhood standard" mailbox as he previous ordered from Peachtree Post and Box the proper mailbox on June 17, 2005. See also the letter dates November 25, 2005 from the High Gables Board of Directors to Defendant.

25.

Identify with particularity any remaining issues pertaining to Defendant's Alleged Covenant Violations, including any issues you have with Defendant's entrance landscaping.

RESPONSE:

See letter dated November 25, 2005 from the High Gables Board of Directors to Defendant.

26.

Identify all Covenants that you have enforced through fines and/or legal action during the past four years and explain how any alleged violation of the Covenants was resolved.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

27.

Identify all of the HOA Members who voted in favor of the June 23, 2003 Amendment to the Declaration recorded at Deed Book 2876, Page 548, Forsyth County, Georgia records and specify whether such person voted in person or by proxy. Also identify the approximate date and time of the meeting where such vote took place.

RESPONSE:

High Gables has previously produced documents to Defendant with this information.

28.

Identify how much you have collected in fines as a result of alleged violations of the Covenants since the June 23 Amendment was recorded in the real property records of Forsyth County, Georgia.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

29.

Explain the relationship between the fines you have attempted to impose against Defendant and the harm you and the HOA Members suffered as a result of Defendant's use of a gravel driveway on a temporary basis?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information

which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

30.

Do you believe that a fine of \$25.00 per day (or \$9,125.00 per year) provides you with an adequate remedy at law for any alleged harm you claim to suffer as a result of Defendant's Alleged Covenant Violations, and if not, why?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

31.

Did you believe that Defendant ever intended not to complete the work underlying Defendant's Alleged Covenant Violations, and if so, please explain the basis for that belief?

RESPONSE:

Unknown.

32.

Do you think the home, landscaping and other improvements constructed on the Oldham Property prior to the completion of the work underlying Defendant's alleged Covenant Violations devalued the other homes in the Neighborhood and if so, explain the basis for that contention?

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

33.

Identify all conversations and correspondence you have had with Governmental Officials concerning Defendant's Alleged Covenant Violations, including the identities of the Board members who engaged in such conversations and correspondence, the general nature of such conversations or correspondence, and the outcome of same.

RESPONSE:

Bob Clark contacted Forsyth County regarding assistance to enforce run off into public right of way and whether the driveway and sidewalk must be completed prior to Defendant receiving a certificate of occupancy.

34.

Identify the author of the anonymous letter sent to Defendant in the second week of July which is attached to Defendant's Answer, Counterclaim and Third Party Complaint as Exhibit A.

RESPONSE:

High Gables objects to this Interrogatory on the grounds that the same seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence pursuant to O.C.G.A. § 9-11-26, et seq.

35.

Identify any conversation or correspondence between any Officer or Director and any HOA Member regarding Defendant's Alleged Covenant Violations.

RESPONSE:

Unknown.

36.

Identify all HOA Members who complained, whether verbally or in writing, to the Board or the Officers and Directors regarding Defendant's Alleged Covenant Violations.

RESPONSE:

Patrick Bryant

37.

Identify the HOA Member(s) that contacted local law enforcement on November 7, 2005 concerning the noise coming from a generator located next to the Oldham Property when Defendant's concrete contractors were finishing Defendant's driveway and sidewalk.

RESPONSE:

Unknown.

38.

Identify all communications [sic] the Board had with HOA Members, the Management Company, or any other person regarding Defendant's Alleged Covenant Violations, and whether those communications included statements that Defendant was an attorney.

RESPONSE:

Unknown.

39.

Explain all facts and circumstances which support your claims in your October 19, 2005 letter to the HOA Members that Plaintiff "...tried diligently to find resolution with [Defendant] through conversations and written letters without remedy...", that Plaintiff "...gave [Defendant] every opportunity to bring his home in compliance..."; and that "[d]espite his verbal promises to do so, no work has been done [by Defendant]...."

RESPONSE:

See Response to Interrogatory No. 7.

40.

Identify all documents upon which you relied in preparing your Verified Answer, Counterclaim and Third Party Complaint or your responses to these Interrogatories, and all documents which relate, whether directly or indirectly, to the issues in this lawsuit. For each document you identify, you should indicate the Interrogatory (or Interrogatories) to which it

applies.

RESPONSE:

See documents attached.

41.

Identify each person supplying any information used in formulating any response to these Interrogatories, indicating by each such person's name the number of each Interrogatory for which that person supplied information.

RESPONSE:

Robert Clark – President of High Gables Board.

42.

Identify all persons whom you intend to call as expert witnesses in the above-styled Action, stating for each such person the subject matter on which he or she is expected to testify, all of the facts and grounds upon which such person's opinions are based, and whether such person has furnished you with a written or recorded statement or report.

RESPONSE:

High Gables has not made a determination as to whom, if anyone, it will call as an expert witness at trial.

43.

If any privilege or immunity is claimed with respect to any document otherwise responsive to Defendant's First Request For Production of Documents served concurrently herewith, identify each document by the type of document (letter, memorandum, telephone note, etc.), its date, its authors, any addresses listed on the document, the present location of document and its present custodians, the number of pages of document, a description of the document or its contents sufficient to determine upon what basis the asserted privilege is claimed, persons other than the addressee or named recipient receiving copies of the document and the relationship of these persons to the parties in this suit; and the specific nature of the privileges or immunity asserted.

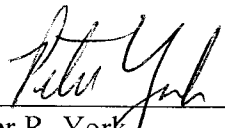
RESPONSE:

High Gables will provide a privilege log should any protected documents not be produced.

This 14 day of April, 2006

HAWKINS & PARNELL, LLP

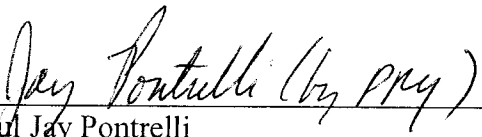
4000 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, Georgia 30308-3243
(404) 614-7400



Peter R. York
Georgia Bar No. 781175

STITES & HARBISON, PLLC

303 Peachtree Street, N.E.
2800 SunTrust Plaza
Georgia 30308-3243



Paul Jay Pontrelli
Georgia Bar No. 583513
ATTORNEYS FOR HIGH GABLES ATLANTA,
HOMEOWNERS ASSOCIATION

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

HIGH GABLES HOMEOWNERS
ASSOCIATION, et al.,

Plaintiffs,

CIVIL ACTION

v.

FILE NO. 05 CV 2005

LARRY C. OLDHAM,


Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for Defendant in this action with a copy of the foregoing **HIGH GABLES HOMEOWNERS ASSOCIATION, INC.'S RESPONSE TO DEFENDANT'S FIRST CONTINUING INTERROGATORIES** by depositing in the United States Mail a copy of same in an envelope with adequate postage thereon, addressed as follows:

Larry C. Oldham, P.C.
416 Pirkle Ferry Road
Suite K-500
Cumming, GA 30040

This 14 day of April, 2006.


Peter R. York