

COPY

FORSYTH COUNTY GEORGIA  
FILED IN THIS OFFICE

IN THE SUPERIOR COURT OF FORSYTH COUNTY  
STATE OF GEORGIA

OCT 11 2005

*Douglas J. Sorella*  
CLERK SUPERIOR COURT

HIGH GABLES HOMEOWNERS  
ASSOCIATION, INC.

Plaintiff.

v.

LARRY C. OLDHAM.

Defendant.

CIVIL ACTION FILE  
NO. OSCW-2005

**VERIFIED COMPLAINT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff High Gables Homeowners' Association, Inc. ("High Gables") files its Complaint against Defendant Larry C. Oldham ("Oldham") as follows:

1.

High Gables is a Georgia nonprofit corporation whose members are persons or entities owning an interest in real property located in Forsyth County, Georgia, more particularly described on Exhibit "A" attached hereto.

2.

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 hereto as Exhibit "B." The Amendment is attached hereto as Exhibit "C."

3.

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.

4.

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 as Exhibit "D" hereto.

5.

This Court has subject matter jurisdiction and venue over Oldham.

6.

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

7.

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.

8.

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.

9.

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

10.

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 as Exhibit "E" hereto.

11.

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.

12.

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.

13.

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

14.

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 hereto as Exhibit "G"). Despite this formal demand, Oldham failed to take any remedial action.

15.

To this date, 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 the specific monetary damages caused by Oldham's continuous acts and omissions in violation of High Gables Declaration and Specifications are difficult to ascertain and the interest sought to be protected is not entirely financial in nature.

17.

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 because with a continuous and/or repeated violations, more than one lawsuit might be required to vindicate High Gables rights in damages. Injunctive relief, alternatively, would prevent a multiplicity of actions.

18.

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 right of High Gables and its members.

19.

High Gables is entitled to an injunctive order mandating that Oldham immediately:

- 1) pour a concrete driveway that conforms with High Gables Declarations and Specifications;
- 2) pour a concrete sidewalk along the frontage of the property that conforms with High Gables Declarations and Specifications;
- 3) install an approved mailbox and mailbox post assembly that conforms with High Gables Declarations and Specifications; and
- 4) complete finished entrance landscaping that conforms with High Gables Declarations and Specifications.

20.

Pursuant to the amended Declaration, and statutory authority, the Association is also entitled to collect a per diem fine of \$25.00 beginning on September 3, 2005, and continuing day to day until Oldham has fully complied with the Declaration and Specifications, as set forth in the June 20, 2005 and August 15, 2005 letters.

21.

Oldham has caused High Gables unnecessary trouble and expense, has acted in bad faith, and has been stubbornly litigious, entitling High Gables to recover its reasonable attorneys' fees under O.C.G.A. § 13-6-11.

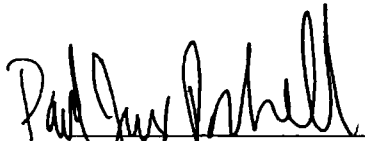
22.

High Gables is also entitled to recover fees pursuant to statutory and contractual authorization in an amount to be proven at trial.

WHEREFORE, Plaintiff, High Gables, prays for the following relief against the Defendant, Oldham.

- a. A per diem fine of \$25.00 beginning on September 3, 2005, and continuing day to day until Oldham has fully complied with the Declaration and Specifications;
- b. An injunctive order mandating that Oldham immediately: 1) pour a concrete driveway that conforms with High Gables Declarations and Specifications; 2) pour a concrete sidewalk along the frontage of the property that conforms with High Gables Declarations and Specifications; 3) install an approved mailbox and mailbox post assembly that conforms with High Gables Declarations and Specifications; and 4) complete finished entrance landscaping that conforms with High Gables Declarations and Specifications;
- c. reasonable attorneys' fees pursuant to O.C.G.A. § 13-6-11, contract and/or statute;
- d. costs; and
- e. such other relief to which High Gables may be properly and justly entitled.

Respectfully submitted,



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COUNSEL FOR PLAINTIFF  
HIGH GABLES HOMEOWNERS ASSOCIATION

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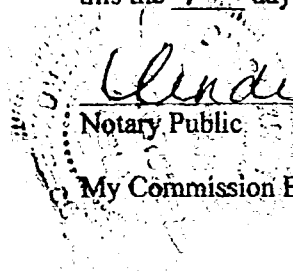
VERIFICATION

Personally appeared before the undersigned officer, duly authorized to administer oaths, ROBERT CLARK, who, upon being duly sworn, deposes and states that I am the President of High Gables Homeowners Association, Inc., and that the facts contained within the foregoing VERIFIED COMPLAINT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF are true and correct to the best of my knowledge and belief.



Robert Clark

Sworn to and subscribed before me  
this the 4<sup>th</sup> day of October 2005.



Glendi L. Rhoten  
Notary Public

My Commission Expires: Nov. 8, 2008