

COPY

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

HIGH GABLES HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

LARRY C. OLDHAM,

Defendant.

NOV 28 2005

Rouglas Bonelle
CLERK SUPERIOR COURT

Civil Action File No. 05-CV-2005

MOTION TO DISMISS

COMES NOW Defendant Larry C. Oldham and shows the Court the following for his Motion to Dismiss the above-referenced Action filed by Plaintiff High Gables Homeowners Association, Inc.:

STATEMENT OF FACTS

Plaintiff filed the above-referenced Verified Complaint on October 11, 2005 wherein it seeks the affirmative equitable relief of an injunction against Defendant. Plaintiff attached to its Complaint the signed Verification of Robert Clark, President of High Gables Homeowners Association, Inc, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Mr. Clark states in his Verification 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."

ARGUMENT AND CITATION OF AUTHORITIES

Plaintiff's Complaint should be dismissed in its entirety for lack of positive and sufficient verification. Petitions for injunctions shall be verified positively by the petitioner or supported


by other satisfactory proof. O.C.G.A. § 9-10-110: Kilgore v. Paschall, 202 Ga. 416 (1947). Plaintiff here has filed a complaint seeking an injunction, and accordingly, is required to attach a positive verification. While Plaintiff has attached the verification of Robert Clark, Mr. Clark fails to state in same that the claim is based upon his own personal knowledge as required under Georgia law. Instead, he states that the allegations are true and correct to the "best of [his] knowledge and belief" which is nothing more than a variation of the insufficient "upon information and belief" type. Hansen et al. v. Mt. Yonah Scenic Estate Club, Inc. et al., 227 Ga. App. 258 (1997) (a verified complaint not made with personal knowledge but based instead on the best of petitioner's knowledge and belief is an insufficient verification).

CONCLUSION

All actions seeking equitable relief require a positive verification. Plaintiff here has failed to provide a proper verification and its complaint against Defendant should be dismissed, accordingly.

Respectfully submitted as of November 28, 2005.

LARRY C. OLDHAM, P.C.



Brent S. Reece
Georgia State Bar No. 597611
Attorneys for Defendant

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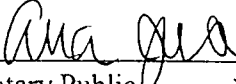
VERIFICATION

COMES NOW Defendant Larry C. Oldham and states under oath that allegations contained in Defendant's Motion to Dismiss filed in the above-styled Action are true and correct.

SO SWORN as of November 28, 2005.

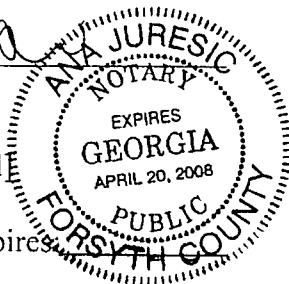
Sworn to and subscribed in the
presence of the undersigned:

 (SEAL)
Larry C. Oldham


Notary Public

[Notary Seal]

My commission expires



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CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true and correct copy of the within and foregoing **Motion to Dismiss** to opposing counsel of record by placing same in the United States Mail with adequate postage thereon and addressed as follows:

Paul Jay Pontrelli, Esq.
Stites & Harbison, PLLC
303 Peachtree Street, N.E.
2800 SunTrust Plaza
Atlanta, Georgia 30339

So certified as of November 28, 2005.

LARRY C. OLDHAM, P.C.



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