

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

**HIGH GABLES HOMEOWNERS ASSOCIATION, INC.'S VERIFIED ANSWER TO
DEFENDANT LARRY C. OLDHAM'S COUNTERCLAIM AND THIRD PARTY CLAIM**

COMES NOW High Gables Homeowners Association. Inc. ("High Gables"),
Plaintiff/Defendant in Counterclaim in the above-captioned case, and hereby files its Answer to
the Counterclaim and Third Party Claim of Larry C. Oldham, Defendant/Plaintiff in
Counterclaim ("Defendant") showing unto the Court as follows:

FIRST AFFIRMATIVE DEFENSE

Defendant's Counterclaim fails to state a claim against High Gables upon which relief
can be granted.

SECOND AFFIRMATIVE DEFENSE

No act or omission on the part of High Gables either caused or contributed to whatever
injury or damages Defendant may have sustained.

THIRD AFFIRMATIVE DEFENSE

Defendant has not satisfied the requirements of O.C.G.A. § 9-11-14, et seq. and his third

party action fails as a matter of law.

FOURTH AFFIRMATIVE DEFENSE

High Gables raises the defense of insufficiency of process.

FIFTH AFFIRMATIVE DEFENSE

High Gables raises the defense of insufficiency of service of process.

SIXTH AFFIRMATIVE DEFENSE

No justiciable controversy exists, and thus the Counterclaim and Third Party Claim should be dismissed.

SEVENTH AFFIRMATIVE DEFENSE

High Gables asserts the defense of justification.

EIGHTH AFFIRMATIVE DEFENSE

High Gables raises the defense of truth.

NINTH AFFIRMATIVE DEFENSE

Defendant's Counterclaim is or may be barred by the doctrine of estoppel and/or waiver.

TENTH DEFENSE

The sole proximate causes of Defendant's damage, if any he sustained, was the negligence of Defendant himself.

ELEVENTH DEFENSE

The negligence of Defendant contributed proximately to his damage as he was not exercising ordinary care for his own safety at the time it is claimed he was damaged.

TWELFTH DEFENSE

Even if it was negligent in the manner set out and charged in the Counterclaim, which

alleged negligence is expressly denied, the negligence of Defendant was equal to or greater than any negligence charged against High Gables in such Counterclaim and the consequences of such negligence, if any in fact existed, could have been avoided had Defendant been in the exercise of ordinary care.

THIRTEENTH DEFENSE

No malice on the part of High Gables either caused or contributed to whatever injury or damage Defendant may have sustained.

FOURTEENTH DEFENSE

High Gables responds to Defendant's numbered paragraphs of his Counterclaim and Third Party Claim ("Counterclaim") as follows:

* 1.

The allegations contained in Paragraph One (1) of Defendant's Counterclaim are admitted.

2.

The allegations contained in Paragraph Two (2) of Defendant's Counterclaim are denied.

3.

The allegations contained in Paragraph Three (3) of Defendant's Counterclaim are admitted.

4.

The allegations contained in Paragraph Four (4) of Defendant's Counterclaim are admitted with respect to the initial construction process in early 2004.

5.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Five (5) of Defendant's Counterclaim.

6.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Six (6) of Defendant's Counterclaim.

*

7.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Seven (7) of Defendant's Counterclaim.

8.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Eight (8) of Defendant's Counterclaim.

9.

In responding to the allegations contained in Paragraph Nine (9) of the Counterclaim, High Gables admits that a finished driveway may not be required for the issuance of a certificate of occupancy by the County, but further responds that the Declarations and Specifications contain mandatory requirements which were violated by Defendant.

10.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Ten (10) of Defendant's Counterclaim.

11

High Gables is without knowledge or information sufficient to form a belief as to the

allegations of Paragraph Eleven (11) of Defendant's Counterclaim.

12.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twelve (12) of Defendant's Counterclaim.

13.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirteen (13) of Defendant's Counterclaim.

14.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Fourteen (14) of Defendant's Counterclaim.

15.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Fifteen (15) of Defendant's Counterclaim.

16.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Sixteen (16) of Defendant's Counterclaim.

17.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Seventeen (17) of Defendant's Counterclaim.

18.

The allegations contained in Paragraph Eighteen (18) of Defendant's Counterclaim are admitted.

19.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Nineteen (19) of Defendant's Counterclaim.

20

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty (20) of Defendant's Counterclaim.

21.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty-One (21) of Defendant's Counterclaim.

22.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty-Two (22) of Defendant's Counterclaim.

23.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty-Three (23) of Defendant's Counterclaim.

24.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty-Four (24) of Defendant's Counterclaim.

25.

The allegations contained in Paragraph Twenty-Five of Defendant's Counterclaim are denied as stated.

26.

The allegations contained in Paragraph Twenty-Six of Defendant's Counterclaim are denied as stated.

27.

High Gables is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Twenty-Seven of Defendant's Counterclaim and High Gables further responds that the letter speaks for itself.

28.

The allegations contained in Paragraph Twenty-Eight of Defendant's Counterclaim are denied as stated.

29.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Twenty-Nine (29) of Defendant's Counterclaim.

30.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty (30) of Defendant's Counterclaim.

31.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty-One (31) of Defendant's Counterclaim.

32.

High Gables admits that Mr. Clark told Defendant that Defendant should have explained these things in writing to the Board earlier. High Gables is without knowledge or information

sufficient to form a belief as to the remaining allegations of Paragraph Thirty-Two (32) of Defendant's Counterclaim.

33.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty-Three (33) of Defendant's Counterclaim.

34.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty-Four (34) of Defendant's Counterclaim.

35.

The allegations contained in Paragraph Thirty-Five (35) of Defendant's Counterclaim are admitted.

36.

The allegations contained in Paragraph Thirty-Six (36) of Defendant's Counterclaim are admitted.

37.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty-Seven (37) of Defendant's Counterclaim.

38.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Thirty-Eight (38) of Defendant's Counterclaim.

39.

High Gables is without knowledge or information sufficient to form a belief as to the

allegations of Paragraph Thirty-Nine (39) of Defendant's Counterclaim.

40.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Forty (40) of Defendant's Counterclaim.

41.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Forty-One (41) of Defendant's Counterclaim.

42.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Forty-Two (42) of Defendant's Counterclaim and further responds that the letter speaks for itself.

43.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Forty-Three (43) of Defendant's Counterclaim.

44.

The allegations contained in Paragraph Forty-Four (44) of Defendant's Counterclaim are denied as stated.

45.

The allegations contained in Paragraph Forty-Five (45) of Defendant's Counterclaim are denied.

46.

High Gables is without knowledge or information sufficient to form a belief as to the

allegations of Paragraph Forty-Six (46) of Defendant's Counterclaim.

47.

The allegations contained in Paragraph Forty-Seven (47) of Defendant's Counterclaim are denied.

48.

The allegations contained in Paragraph Forty-Eight (48) of Defendant's Counterclaim are denied as stated.

49.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Forty-Nine (49) of Defendant's Counterclaim.

50.

The allegations contained in Paragraph Fifty (50) of Defendant's Counterclaim are denied.

51.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Fifty-One (51) of Defendant's Counterclaim.

52.

High Gables is without knowledge or information sufficient to form a belief as to the allegations of Paragraph Fifty-Two (52) of Defendant's Counterclaim.

53.

The allegations contained in Paragraph Fifty-Three (53) of Defendant's Counterclaim are denied.

54.

The allegations contained in Paragraph Fifty-Four (54) of Defendant's Counterclaim are denied.

55.

The allegations contained in Paragraph Fifty-Five (55) of Defendant's Counterclaim are denied.

COUNT I

BREACH OF FIDUCIARY DUTY

56.

High Gables realleges, adopts and incorporates herein its answer in paragraphs One (1) through Fifty-Five (55) above as if fully set forth herein.

57.

High Gables admits it has certain obligations set forth in the Covenants and Declarations, but denies this is a complete recital of said duties.

58.

The allegations contained in Paragraph Fifty-Eight (58) of Defendant's Counterclaim are denied.

59.

The allegations contained in Paragraph Fifty-Nine (59) of Defendant's Counterclaim are denied as stated.

60.

The allegations contained in Paragraph Sixty (60) of Defendant's Counterclaim are

denied as stated.

61.

The allegations contained in Paragraph Sixty-One (61) of Defendant's Counterclaim are denied.

62.

The allegations contained in Paragraph Sixty-Two (62) of Defendant's Counterclaim are denied.

63.

The allegations contained in Paragraph Sixty-Three (63) of Defendant's Counterclaim are denied.

64.

The allegations contained in Paragraph Sixty-Four (64) of Defendant's Counterclaim are denied.

65.

The allegations contained in Paragraph Sixty-Five (65) of Defendant's Counterclaim are denied.

66.

The allegations contained in Paragraph Sixty-Six(66) of Defendant's Counterclaim are denied.

COUNT II
DEFAMATION

67.

High Gables realleges, adopts and incorporates herein its answer in paragraphs One (1) through Sixty-Six (66) above as if fully set forth herein.

68.

The allegations contained in Paragraph Sixty-Eight (68) of Defendant's Counterclaim are denied.

69.

The allegations contained in Paragraph Sixty-Nine (69) of Defendant's Counterclaim are denied.

70

The allegations contained in Paragraph Seventy (70) of Defendant's Counterclaim are denied.

71.

The allegations contained in Paragraph Seventy-One (71) of Defendant's Counterclaim are denied.

72.

The allegations contained in Paragraph Seventy-Two (72) of Defendant's Counterclaim are denied.

73.

The allegations contained in Paragraph Seventy-Three (73) of Defendant's Counterclaim

are denied.

74.

The allegations contained in Paragraph Seventy-Four (74) of Defendant's Counterclaim are denied.

COUNT III

DECLARATORY RELIEF

75.

High Gables realleges, adopts and incorporates herein its answers in Paragraphs One (1) through Seventy-Four (74) above as if fully set forth herein.

76.

The allegations contained in Paragraph Seventy-Six (76) of Defendant's Counterclaim are denied.

77.

The allegations contained in Paragraph Seventy-Seven (77) of Defendant's Counterclaim are denied.

78.

The allegations contained in Paragraph Seventy-Eight (78) of Defendant's Counterclaim are denied.

79.

The allegations contained in Paragraph Seventy-Nine (79) of Defendant's Counterclaim are denied.

*

80.

The allegations contained in Paragraph Eighty (80) of Defendant's Counterclaim are denied.

81.

The allegations contained in Paragraph Eighty-One (81) of Defendant's Counterclaim are denied.

82.

The allegations contained in Paragraph Eighty-Two (82) of Defendant's Counterclaim are denied.

Any allegations of Defendant's Counterclaim not specifically addressed above are herewith specifically denied.

*

WHEREFORE, having fully answered, High Gables prays as follows:

1. That all claims of Defendant be dismissed;
2. That High Gables has Judgment in its favor on all claims of Defendant's Counterclaim;
3. That all costs of this action be taxed against Defendant; and :
4. That High Gables has such other and further relief as this Court deems just and

proper.

*

This 30 day of December, 2005

HAWKINS & PARNELL, LLP



Peter R. York
Georgia Bar No. 781175
ATTORNEY FOR DEFENDANT IN
COUNTERCLAIM HIGH GABLES
HOMEOWNERS ASSOCIATION

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STATE OF GEORGIA

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ASSOCIATION,)
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Plaintiffs.)
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v.)
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LARRY C. OLDHAM,)
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Defendant.)
_____)

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for Plaintiffs in this action with a copy of the foregoing **High Gables Homeowners Association's Answer to Counterclaim and Third-Party Claim of Larry C. Oldham** 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

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

This 30 day of December, 2005.



Peter R. York

STATE OF GEORGIA

COUNTY OF _____

VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, Robert Clark, who being first duly sworn, avers and says that he is authorized to verify the Answer of High Gables Homeowner's Association, Inc. to Defendant Larry C. Oldham's Counterclaim and Third Party Claim, and further states that he has read this Answer and believes it to be true and correct to the best of his knowledge.

This 30th day of DECEMBER, 2005.

Robert Clark
 ROBERT CLARK FOR
 HIGH GABLES HOMEOWNERS
 ASSOCIATION, INC.

Sworn to and subscribed before me
 this 30th day of December, 2005.

Notary Public Diane Henderson

My Commission Expires: _____

