

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

and
Plaintiffs,

v.

**ESTATE LANDOWNERS
ASSOCIATION**, an Oregon non-profit
corporation;

&

, Co-Trustees of the _____ and
Revocable Trust;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;
, an individual;

&

Co-Trustees of The _____ Joint Trust Dated
September 15, 2017; _____, an
individual; _____, an individual;

Co-Trustees of the _____ and
Joint Trust U/A/D October 18, 2018;
, an individual;
, an individual;

&

, Co-Trustees of the _____ Trust;
, an individual; and
, an individual;

Defendants.

Case No.

COMPLAINT
(Declaratory Relief under ORS 28.020;
Supplemental Relief under ORS 28.080)

Not Subject to Mandatory Arbitration
Fees under ORS 21.135(2)(f)

1 Plaintiffs, and , allege as follows:

2 **Parties**

3 1.

4 Plaintiffs and (“Plaintiffs”) are residents of Washington County
5 and own the property located at Drive, Cornelius, Oregon. Plaintiffs’
6 property is part of a planned community referred to as “ Estates” and is identified as
7 tax lot of the Estates planned community.

8 2.

9 Defendant Estate Landowners Association is a homeowners association
10 organized as a nonprofit corporation under ORS chapter 65 to manage Estates
11 (“Defendant HOA”).

12 3.

13 Defendants and are the Co-Trustees of the
14 Revocable Trust (“Defendant Trust”). The Trust owns the property located at
15 , Cornelius, Oregon. Defendant Trust’s property is part of the
16 Estates planned community.

17 4.

18 Defendant (“Defendant”) is a resident of Washington County and
19 owns the property located at Drive, Cornelius, Oregon. Defendant
20 property is part of the Estates planned community.

21 5.

22 Defendants and (“Defendants”) are residents of
23 Washington County and own the property located at Drive, Cornelius,
24 Oregon. Defendants property is part of the Estates planned community.

1

6.

2

Defendants

and

("Defendants ") are

3

residents of Washington County and own the property located at ,

4

Cornelius, Oregon. Defendants property is part of the Estates planned

5

community.

6

7.

7

Defendants

and

("Defendants ") are residents of

8

Washington County and own the property located at , Cornelius,

9

Oregon. Defendants property is part of the Estates planned community.

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8.

11

Defendants

and

("Defendants ") are residents of Washington

12

County and own the property located at , Cornelius, Oregon.

13

Defendants property is part of the Estates planned community.

14

9.

15

Defendant

("Defendant

") is a resident of Washington

16

County and owns the property located at , Cornelius, Oregon.

17

Defendant property is part of the Estates planned community.

18

10.

19

Defendant

("Defendant

") is a resident of Washington

20

County and owns the property located at , Cornelius, Oregon.

21

Defendant property is part of the Estates planned community.

22

11.

23

Defendants

and

are Co-Trustees of The Joint

24

Trust Dated September 15, 2017 ("Defendant "). The Trust owns the property

1 located at _____, Cornelius, Oregon. Defendant _____ Trust's property is
2 part of the _____ Estates planned community.
3 _____ 12.
4 Defendants _____ and _____ ("Defendants _____") are residents of Washington
5 County and own the property located at _____, Cornelius, Oregon.
6 Defendants _____ property is part of the _____ Estates planned community.
7 _____ 13.
8 Defendants _____ and _____ are Co-Trustees of the _____ and
9 _____ Joint Trust U/A/D October 18, 2018 ("Defendant _____ Trust"). The Trust
10 owns the property located at _____, Cornelius, Oregon. Defendant
11 Trust's property is part of the _____ Estates planned community.
12 _____ 14.
13 Defendants _____ and _____ ("Defendants _____") are residents of Washington
14 County and own the property located at _____, Cornelius, Oregon.
15 Defendants _____ property is part of the _____ Estates planned community.
16 _____ 15.
17 Defendants _____ and _____ are Co-Trustees of the _____ Trust ("Defendant
18 _____ Trust"). The Trust owns the property located at _____, Cornelius,
19 Oregon. Defendant _____ Trust's property is part of the _____ Estates planned
20 community.
21 _____ 16.
22 Defendants _____ and _____ ("Defendants _____") are residents of
23 Washington County and own the property located at _____, Cornelius,
24 Oregon. Defendants _____ property is part of the _____ Estates planned community.

1 Venue

2 17.

3 Venue is proper in Washington County, Oregon because the dispute arises out of the
4 validity and application of certain covenants, conditions and restrictions recorded against the
5 property within the Estates planned community which is located on a tract of land
6 located in the West half of Section 20, Township 1 (one) South, Range 3 West, Willamette
7 Meridian, Washington County, Oregon.

8 Factual Allegations Common to all Claims

9 18.

10 Bracken Drive, a private road, provides access to all of the Estates planned
11 community lots. Although Plaintiffs' property uses Bracken Drive for purposes of access,
12 Plaintiffs' property also abuts Eischen Drive, a dedicated County road.

13 19.

14 All of the Estates planned community lots are subject to the original Covenants,
15 Conditions and Restrictions recorded against the Estates lots in Washington County on
16 February 23, 1972 (the "Original CC&Rs").

17 20.

18 The Original CC&Rs were amended and updated pursuant to a Restrictive Covenant
19 recorded in Washington County on November 5, 1973 (the "1973 Amended CC&Rs").

20 21.

21 The Original CC&Rs and 1973 Amended CC&Rs were amended and updated pursuant to
22 a Restrictive Covenant recorded in Washington County on February 22, 2011 (the "2011
23 Amended CC&Rs").

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22.

Section 2 of the 2011 Amended CC&Rs requires lot owners to assume a fair share of responsibility for the cost of maintenance and upkeep of Bracken Drive and specifically lists tax lots 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1014 and 1017 as responsible for this obligation. Plaintiffs' tax lot is not listed in Section 2. Section 2 further provides that financial assessments for the upkeep of Bracken Road must be approved by two-thirds of the owners and if any owner is in arrears in paying their financial assessments for more than twelve months, Defendant HOA has the authority to place a lien on the tax lot.

23.

Section 12 of the 2011 Amended CC&Rs prohibits the division of any lot in Estates "unless it abuts a dedicated county road."

24.

Defendant Fern Hill HOA attempted to amend and update the Original CC&Rs, 1973 Amended CC&Rs and 2011 Amended CC&Rs pursuant to an Amendment to Restrictive Covenant recorded in Washington County on June 15, 2018 (the "Alleged 2018 Amended CC&Rs").

25.

At the time Defendant HOA attempted to amend the CC&Rs and recorded the Alleged 2018 Amended CC&Rs, Defendant HOA had been dissolved for failing to renew its state corporation registration since March 20, 2005.

26.

The Alleged 2018 Amended CC&Rs purported to amend and replace Section 2 of the 2011 Amended CC&Rs with a new provision that required "[e]very tax lot owner" to assume a fair share of responsibility for the cost of maintenance and upkeep of Bracken Drive.

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27.

The Alleged 2018 Amended CC&Rs purported to amend and replace Section 12 of the 2011 Amended CC&Rs with a new provision that prohibits the division of any lot in Estates “unless it abuts a completed and dedicated county road that is accessible and usable by all traffic for ingress and egress from Estates.”

28.

The Alleged 2018 Amended CC&Rs purported to amend the 2011 Amended CC&Rs by creating an Architectural Control Committee and requiring all lot owners to obtain the prior approval of the Architectural Control Committee for all buildings. At the time Defendant HOA recorded the Alleged 2018 Amended CC&Rs, Plaintiffs’ property was the only lot in Estates that did not have a house constructed on the lot.

29.

On July 3, 2018, Defendant HOA recorded a Notice of Claim of Lien against Plaintiffs’ property pursuant to ORS 94.709 for alleged outstanding assessments in the amount of \$1,200 that Plaintiffs’ failed to pay.

**FIRST CLAIM FOR RELIEF
(Declaratory Relief)**

30.

Plaintiffs reallege paragraphs 1 through 29 above as though fully set forth herein.

31.

The parties have a justiciable controversy over the validity and effect of the Alleged 2018 Amended CC&Rs.

32.

Plaintiffs contend that the Alleged 2018 Amended CC&Rs are invalid and unenforceable for several separate and independent reasons.

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33.

The Alleged 2018 Amended CC&Rs are invalid and unenforceable because Defendant HOA was dissolved at the time the Alleged 2018 Amended CC&Rs were adopted and recorded. A dissolved homeowner association’s powers and authority are limited under ORS 94.626 to those that governed immediately prior to the dissolution and the homeowner association is served by the “members of the board of directors and the officers who served immediately prior to the dissolution.” Since Defendant HOA’s powers prior to dissolution were more limited than those granted under the Alleged 2018 Amended CC&Rs and the Alleged 2018 Amended CC&Rs were not adopted by the board of directors and the officers who served immediately prior to the dissolution, they are invalid and unenforceable.

34.

The Alleged 2018 Amended CC&Rs are invalid and unenforceable because they were not adopted pursuant to the required percentage of votes. ORS 94.590(1) requires “at least 75 percent of the total votes” to amend the CC&Rs. The Alleged 2018 Amended CC&Rs were not approved by 75 percent or more of the lot owners.

35.

The Alleged 2018 Amended CC&Rs are invalid and unenforceable because they were not adopted pursuant to the required procedures. Defendant HOA did not comply with the required notice for a meeting under ORS 94.650, the method for voting under ORS 94.660, the requirements for a meeting quorum under ORS 94.655 or the requirements for using written ballots under ORS 94.647.

36.

The Alleged 2018 Amended CC&Rs are invalid and unenforceable because they required the consent of Plaintiffs and Plaintiffs did not consent. ORS 94.590(1)(b)(B) provides that any amendment that is designed to change “any uses to which any lot or unit is restricted as stated in

1 the declaration” requires the unanimous consent of all affected lot owners. Section 4 of the
2 Alleged 2018 Amended CC&Rs, which requires the Architectural Control Committee to approve
3 the design and location of houses, was intended to limit Plaintiffs’ ability to develop their
4 property because Plaintiffs’ property is the only remaining lot in the planned community that
5 does not have a house. Section 14 of the Alleged 2018 Amended CC&Rs, which prohibits lots
6 that abut Eischen Drive from being divided, was intended to prohibit Plaintiffs from dividing
7 their property. Since these amendments were designed to restrict Plaintiffs use of their property
8 and Plaintiffs did not consent to these amendments, the Alleged 2018 Amended CC&Rs are
9 invalid and unenforceable.

10 37.

11 The Alleged 2018 Amended CC&Rs are invalid and unenforceable because they were
12 adopted as part of an unreasonable and discriminatory attempt to preclude Plaintiffs from
13 lawfully using their property. Defendant HOA cannot use the CC&Rs in an
14 unreasonable and discriminatory manner to preclude a single lot owner from lawfully using their
15 property. Defendant HOA adopted the Alleged 2018 Amended CC&Rs primarily to
16 restrict Plaintiffs’ use of their property in an unreasonable and discriminatory manner.

17 38.

18 ORS 94.590(4) provides that an amendment to CC&Rs is conclusively presumed to have
19 been regularly adopted in compliance with all applicable procedures relating to such amendment
20 unless an action is brought within one year after the date such amendment was recorded.
21 Plaintiffs are bringing this action within one year of the date the Alleged 2018 Amended CC&Rs
22 were recorded because they contend the Alleged 2018 Amended CC&Rs were not regularly
23 adopted in compliance with all applicable procedures and Plaintiffs desire to challenge the
24 validity and enforceability of the Alleged 2018 Amended CC&Rs.

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39.

Defendants contend that the Alleged 2018 Amended CC&Rs are valid and enforceable.

40.

A declaration by this court as to the validity and enforceability of the Alleged 2018 Amended CC&Rs will resolve the controversy between the parties.

**SECOND CLAIM FOR RELIEF
(Declaratory Relief)**

41.

Plaintiffs reallege paragraphs 1 through 40 above as though fully set forth herein.

42.

The Notice of Claim of Lien was recorded against Plaintiffs’ property based on the fact that the Alleged 2018 Amended CC&Rs purported to allow Defendant Fern Hill HOA to assess Plaintiffs’ property. The 2011 Amended CC&Rs limited the authority to impose financial assessment to the specific tax lots listed in Section 2 of the 2011 Amended CC&Rs and Plaintiffs’ Lot 1012 was not listed. Since the Alleged 2018 Amended CC&Rs are invalid and unenforceable, Defendant HOA did not have the authority to impose financial assessment on Plaintiffs’ property. Since Defendant HOA did not have the authority to impose financial assessment on Plaintiffs’ property, the Notice of Claim of Lien is invalid and unenforceable.

43.

Even if the Alleged 2018 Amended CC&Rs were valid and enforceable, Defendant HOA did not have the authority to record the Notice of Claim of Lien against Plaintiffs’ property because it had not been twelve months. Defendant HOA did not have the authority to impose financial assessment on Plaintiffs’ property until the Alleged 2018 Amended CC&Rs were duly adopted and recorded. The Alleged 2018 Amended CC&Rs only authorized Defendant Fern Hill HOA to place a lien on property if the tax lot owner “is in arrears more than

1 twelve (12) months.” The Notice of Claim of Lien was recorded against Plaintiffs’ property less
2 than one month after the Alleged 2018 Amended CC&Rs were recorded. Since Plaintiffs cannot
3 be in arrears more than twelve months even if the Alleged 2018 Amended CC&Rs granted
4 Defendant HOA the authority to impose financial assessment against Plaintiffs’
5 property, the Notice of Claim of Lien is invalid and unenforceable.

6 44.

7 Defendants contend that the Notice of Claim of Lien is valid and enforceable.

8 45.

9 A declaration by this court as to the validity and enforceability of the Notice of Claim of
10 Lien will resolve the controversy between the parties.

11 46.

12 Pursuant to ORS 28.080, if the court declares that the Notice of Claim of Lien is invalid
13 and unenforceable, Plaintiffs are entitled to injunctive relief compelling Defendant
14 HOA to remove the Notice of Claim of Lien recorded against Plaintiffs’ property.

15 WHEREFORE, Plaintiffs pray for judgment and decree as follows:

16 A) FIRST CLAIM FOR RELIEF (Declaratory Relief): a judgment declaring that the
17 Alleged 2018 Amended CC&Rs are invalid and unenforceable;

18 B) SECOND CLAIM FOR RELIEF (Declaratory Relief; Supplemental Relief): a
19 judgment declaring that the Notice of Claim of Lien is invalid and unenforceable and
20 supplemental injunctive relief compelling Defendant HOA to remove the Notice of
21 Claim of Lien recorded against Plaintiffs’ property;

- 1 C) An award of Plaintiffs' costs and disbursement incurred herein; and
2 D) Granting such other relief as this court may deem just and equitable.

DATED this 13th day of June 2019.

By _____ OSB # _____

Portland, OR 97209-3280

Telephone: _____

Of Attorneys for Plaintiffs