

November 17 2016 11:04 AM

JUDGE STEPHANIE A. AREND

KEVIN STOCK
COUNTY CLERK
NO: 16-2-12121-2

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 LINCOLN and CYNTHIA GLENISTER; AN
10 HUYNH; HEATHER HANSTAD; MIKE and
11 WENDY REYNOLDS; TREVOR and
12 ROCHELLE PETTINGILL; JONATHAN and
13 DENISE SOKOLOWSKI; BRAD and SUE
14 COLBO; DAVID and TERRI ASPLUND;
15 TINH V. NGUYEN; STEVE and JEANINE
16 BARNDT; RON BEESLEY and KIM
17 NORRIS; DAVID and CLAIRE
18 GORENSTEIN; BILL NIX and VICTORIA
19 JIMANO; DAN and JANET WOJTALA;
20 RUSS and PEGGY BARSTOW; BRENT and
21 DANA EGGLESTON; RUSS and JENNIFER
22 CRUTCHER; ALAN and NORMA
23 OREJANA; SEAN and SHANNON BROWN;
24 COE and EILEEN LINDER; SCOTT and
25 SUZANNE BERGESON; BOB and RUBY
26 CHARNESS; MARK and IZZY BOYD;
GRAHAM and ERIKA STAINES; ERNEST
and PAMELA PETERSON; JEFF ROCKOFF
and CHARLENE HUTCHINS; LUTHER and
LOREILLI AGUILAR; TINH NUGYEN and
PHUNG LE,

Plaintiffs,

vs.

No. 16-2-12121-2

DEFENDANT'S ANSWER TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 BOARD OF DIRECTORS OF SILVER
2 CREEK ASSOCIATION, a Washington
3 nonprofit corporation, dba SILVER CREEK
4 HOME OWNER'S ASSOCIATION,

Defendant.

5 In answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief, Defendant
6 Board of Directors of Silver Creek Association dba Silver Creek Home Owner's Association
7 ("Silver Creek" or "Association") admit, deny, and allege as follows:

8 **PARAGRAPHS DENIED ON LACK OF INFORMATION AND BELIEF**

9 Paragraphs 1.1, 3.2 are denied for lack of information sufficient to form a belief as to
10 the truth thereof.

11 **PARAGRAPHS ADMITTED IN PART AND DENIED IN PART**

12 In answer to paragraph 1.2, Silver Creek admits that it is a non-profit corporation
13 incorporated in the State of Washington. Silver Creek further admits that it is governed by
14 state law, as well as its Declaration of Covenants, Conditions, Restrictions and Easements
15 ("Master CCRs") and its Bylaws. Those documents speak for themselves, and paragraph 1.2
16 is denied to the extent it misstates or mischaracterizes their contents. All remaining
17 allegations, if any, are denied.

18 In answer to paragraphs 2.1 and 2.2, Silver Creek admits that jurisdiction and venue
19 are proper in the Pierce County Superior Court. All remaining allegations, if any, are denied.

20 In answer to paragraph 3.3, Silver Creek admits that the Common Area is subject to
21 the Association's management in accordance with the governing documents for the
22 Association and state law. In response to the remaining allegations contained in paragraph
23 3.3, the Silver Creek governing documents speak for themselves. To the extent that the
24 aforementioned paragraph mischaracterizes or misquotes the governing documents, those
25 allegations are denied. All remaining allegations, if any, are denied for lack of information
26 sufficient to form a belief as to the truth thereof.

1 In answer to paragraph 3.3.1, Silver Creek admits that the Master CCRs exist and
2 speak for themselves. To the extent the aforementioned paragraph mischaracterizes or
3 misquotes the Master CCRs, those allegations are denied. Silver Creek also denies as to what
4 “the Declarant desired to do” for lack of information sufficient to form a belief as to the truth
5 thereof. All remaining allegations, if any, are denied for lack of information sufficient to
6 form a belief as to the truth thereof.

7 In answer to paragraphs 3.3.2., 3.3.3, 3.3.4, and 3.3.5, Silver Creek admits that the
8 Master CCRs speak for themselves. To the extent that the aforementioned paragraphs
9 mischaracterize or misquote the Master CCRs, those paragraphs and the allegations therein
10 are denied. All remaining allegations, if any, are denied for lack of information sufficient to
11 form a belief as to the truth thereof.

12 In answer to paragraph 3.4, based on information and belief, Silver Creek admits that
13 Benum Enterprises made a request to Silver Creek Development regarding tree
14 trimming/pruning. Silver Creek further admits, based on information and belief, that Silver
15 Creek Development approved the request subject to the conditions issued by Pierce County.
16 All remaining allegations are denied for lack of information sufficient to form a belief as to
17 the truth thereof.

18 In answer to paragraph 3.5, Silver Creek admits that the Grayhawk Owners submitted
19 a second request to the Association for tree maintenance work. Silver Creek further admits
20 that it approved the request following receipt of a 2007 report from certified arborist Bryce
21 Landrud, Thundering Oak Enterprises, Inc. Silver Creek denies that the tree maintenance
22 work proceeded as approved. All remaining allegations, if any, are denied for lack of
23 information sufficient to form a belief as to the truth thereof.

24 In answer to paragraph 3.6, Silver Creek admits that the Grayhawk Owners submitted
25 a third request to the Association for tree maintenance work. The Association further admits
26 that as part of the review, a geotechnical report was requested and completed by AGES, LLC



1 and submitted to the Association. All remaining allegations are denied for lack of information
2 sufficient to form a belief as to the truth thereof.

3 In answer to paragraph 3.7, Silver Creek admits that it requested an additional arborist
4 report from the Grayhawk Owners and that a report was completed by Bryce Landrud. The
5 report done by Mr. Landrud speaks for itself. To the extent paragraph 3.7 mischaracterizes or
6 misquotes the report, that paragraph and the allegations therein are denied. All remaining
7 allegations, if any, are denied for lack of information sufficient to form a belief as to the truth
8 thereof.

9 In answer to paragraph 3.8, Silver Creek admits the Board was advised of certain
10 conditions occurring within the Community Park. Silver Creek denies that it has failed to
11 take any action to address these conditions. All remaining allegations, if any, are denied for
12 lack of information sufficient to form a belief as to the truth thereof.

13 In response to Paragraph 6.2, Silver Creek admits that the Grayhawk subdivision is
14 within the Silver Creek community and that the Board of Directors for Silver Creek acts on
15 behalf of all sub-divisions comprising Silver Creek. Silver Creek further admits that it is
16 comprised of approximately 1,776 residential lots, including the 99 (approximate) lots in the
17 Grayhawk sub-division, and that all 1,776 lots are part of the Silver Creek Home Owners'
18 Association. Any remaining allegations in Paragraph 6.2 are denied for lack of information
19 sufficient to form a belief as to the truth thereof.

20 In response to Paragraph 6.3, Silver Creek admits that its rights and responsibilities are
21 set forth in the Master CCRs for Silver Creek and in state law. To the extent that either are
22 mischaracterized or misquoted in Paragraph 6.3, those allegations are denied. All remaining
23 allegations, if any, are denied for lack of information sufficient to form a belief as to the truth
24 thereof.

25 PARAGRAPHS DENIED

26 Paragraphs 3.9, 3.10, 3.11, 4.2, 4.3, 5.2, 5.3, 5.4, 6.4, and 6.5 are denied.

1 Silver Creek denies that Plaintiffs are entitled to the relief requested in their Requests
2 for Relief, including sub-parts 1-5.

3 All paragraphs not specifically addressed elsewhere in this pleading are denied.

4 **PARAGRAPHS TO WHICH NO RESPONSE IS REQUIRED**

5 In response to paragraphs 3.1, 4.1, 5.1, and 6.1, Silver Creek incorporates its responses
6 to all previous paragraphs as though fully set forth herein.

7 **AFFIRMATIVE DEFENSES**

8 Further answering, and by way of affirmative defenses, Silver Creek states as follows:

9 Discovery and investigation may reveal that one or more of the following defenses
10 may be applicable to this matter. Silver Creek therefore asserts those possible defenses,
11 which will be withdrawn if warranted by the facts or law.

12 **First Affirmative Defense:** Plaintiffs are comparatively negligent and/or at fault,
13 and their alleged damages should be reduced in proportion to their own comparative fault.

14 **Second Affirmative Defense:** Plaintiffs' damages, if any, are the result of the fault of
15 a nonparty. The trier of fact should apportion all fault to all entities whether or not parties,
16 pursuant to RCW 4.22.

17 **Third Affirmative Defense:** Portions of Plaintiffs' Complaint fail to state a claim
18 upon which relief can be granted for multiple reasons including, but not limited to, ratification
19 of past acts by Plaintiffs, Plaintiffs' request for preferential treatment in violation of the spirit
20 and language of the Master CCRs as well as state law, and failure by Plaintiffs to comply with
21 express directives local governing bodies.

22 **Fourth Affirmative Defense:** Portions of Plaintiffs' Complaint are barred by the
23 doctrine of unclean hands.

24 **Fifth Affirmative Defense:** Plaintiffs' requested relief threatens to render the Silver
25 Creek community noncompliant with state, local and federal law.
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Sixth Affirmative Defense: Plaintiffs' claims may be barred by the operation of the doctrine of waiver.

Specific Reservation: Silver Creek specifically reserve its right to amend its answer by way of additional affirmative defenses, counterclaims, cross-claims, or by instituting third-party actions as additional facts are obtained through further investigation and discovery.

WHEREFORE, Silver Creek prays for judgment:

- 1. Dismissing Plaintiffs' Complaint with prejudice and with costs;
- 2. For all of Silver Creek's attorney's fees and costs incurred herein; and
- 3. For such other relief as the court deems just and equitable.

Dated this 17th day of November, 2016.

WILSON SMITH COCHRAN DICKERSON

By s/Gabriella Wagner
 Gabriella Wagner, WSBA #42898
 Wilson Smith Cochran Dickerson
 901 Fifth Avenue, Suite 1700
 Seattle, WA 98164
 Telephone: 206-623-4100
 Fax: 206-623-9273
 Email: wagner@wscd.com

Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that under penalty of perjury under the laws of the State of
3 Washington that on the below date I caused to be served the foregoing document on:

4 **Attorney for Plaintiffs**

5 Jason M. Whalen
6 Shasta L. Kelley
7 Ledger Square Law, P.S.
8 710 Market Street
9 Tacoma, WA 98402
10 () Via U.S. Mail
11 () Via Facsimile: 253-327-1700
12 () Via Hand Delivery
13 (X) Via Email: Jason@ledgersquarelaw.com
14 (X) Via Email: shasta@ledgersquarelaw.com

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SIGNED this 17th day of November, 2016, at Seattle, Washington.



Becky Phares

