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KEVIN STOCK
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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 LINDNER; 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
LORELLI AGUILAR; TINH NGUYEN and
PHUNG LE,

Plaintiffs,

vs.

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

Defendant.

NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 Pierce County and are homeowners within a subdivision of Silver Creek, known as Grayhawk at
2 Silver Creek.

3 1.2 Defendant Silver Creek Association. Defendant Silver Creek Association is a
4 Washington nonprofit corporation, having its principal place of business in Puyallup, Pierce
5 County, Washington, and doing business as Silver Creek Home Owner's Association ("Silver
6 Creek" or "Association"). The Association is charged with the duties and vested with the powers
7 prescribed by law and as set forth in the governing documents for the Association. Silver Creek
8 consists of nine neighborhoods with over 1700 single-family residences. Silver Creek is a Planned
9 Unit Development, subject to the provisions of that certain Declaration of Covenants, Conditions,
10 Restrictions and Easements for Silver Creek, recorded on December 12, 1996, under Pierce County
11 Auditor's No. 9612120005 and re-recorded under Auditor's No. 9612240018 ("Master CCRs").
12 Each neighborhood, like Grayhawk, is also subject to a "supplementary" Declaration of
13 Covenants, Conditions, and Restrictions. The Supplementary Declaration of Covenants,
14 Conditions, and Restrictions for Grayhawk at Silver Creek was recorded under Pierce County
15 Auditor's No. 9903310233, and was amended by First Amendment dated March 31, 1999 and
16 recorded under Auditor's No. 9904010364. The Silver Creek Home Owner's Association is also
17 governed by its Bylaws, as amended and restated as of August 2, 2012.

21 II. JURISDICTION

22 2.1 Jurisdiction. Jurisdiction is appropriate with the Superior Court as this action seeks
23 declaratory and injunctive relief regarding the interpretation of rights and responsibilities by and
24 between the parties with regard to the Association Board's exercise of its duties under the Master
25 CCRs for the benefit of all owners in Silver Creek, including Plaintiffs herein.
26

1 3.3.3 Under Section 3.9 of the Master CCRs, the Architectural Control
2 Committee, designated by the Association, is responsible for reviewing and approving certain
3 activities, including the “planting, pruning, cutting and trimming of trees and other vegetation
4 within Silver Creek.”

5 3.3.4 Section 6.17 of the Master CCRs (“Nuisances Prohibited”) proscribes
6 activity on or in any portion of Silver Creek which unreasonably interferes with the rights of the
7 other Owners to the use and enjoyment of their respective Lots and Living Units or of the Common
8 Areas.

9 3.3.5 Section 7.3 of the Master CCRs requires the Association to maintain, repair,
10 replace, improve and otherwise manage all of the Common Areas so as to keep them in good repair
11 and condition and “shall conduct such additional maintenance, repair, replacement, construction
12 or reconstruction as may be determined . . . to promote the recreation, health, safety and welfare
13 of the Owners. Any action necessary or appropriate to the maintenance and upkeep of the
14 Common Areas “shall be taken by the Association only.”

15 3.4 In 1999, when the Grayhawk subdivision was established, home builder Benum
16 Enterprises made a first request to Silver Creek Development, the predecessor to the Defendant
17 Association, for tree trimming/pruning in order to facilitate the establishment of view homes in
18 the Grayhawk subdivision. In January 2000, Silver Creek Development approved the request with
19 conditions as issued by Pierce County (via November 9, 1999 letter) and as set forth in the Master
20 CCRs, Section 7. Subsequently, the trees were trimmed consistent with the conditions and views
21 were maintained.

22 3.5 In 2006, Grayhawk Owners submitted a second request to the Association, at that
23 time via its Architectural Control Committee, for similar tree maintenance work that had been
24 done in 1999. The Grayhawk Owners were asked to provide an arborist report for the proposed
25 scope of work. The report, completed in early 2007 by Bryce Landrud, Thundering Oak
26

1 Enterprises, Inc. (certified arborist), was submitted and the request was thereafter approved in July
2 2007. The tree maintenance proceeded as approved.

3 3.6 In 2013, after 7 years of growth and tree maturation, the Grayhawk Owners made
4 a third request to the Association through its Architectural Control Committee (“ACC”) for tree
5 and view maintenance. As part of its review process, the Association Board requested the
6 Grayhawk Owners provide a geotechnical report to ensure that the proposed tree maintenance
7 would not endanger the stability of the hillside. The completed report by AGES, LLC
8 (geotechnical engineering company), obtained in August 2014 at Grayhawk Owners’ expense,
9 confirmed that there was no issue with slope stability; rather, that the long-term stability of the
10 slope would be increased with continued forest canopy management. The report was furnished to
11 the Association Board, and described the scope of work, ensuring that the health of the wooded
12 area and slope would not be negatively impacted by the maintenance work.

13 3.7 The Association Board also requested the Grayhawk Owners fund an additional
14 arborist report. On June 20, 2015, certified arborist Bryce Landrud with Thundering Oak
15 Enterprises provided his report and survey of the dense, overcrowded evergreen trees in the
16 Community Park area. As part of his report, Mr. Landrud reminded the Board that “On this site,
17 most of the trees have been trimmed or topped over the years to maintain view corridors for
18 residents. This process has kept many more trees viable over the years as it prevents any trees
19 from becoming dominant and shading out smaller or weaker neighbors.” Mr. Landrud provided a
20 comprehensive renovation plan that started with a simple thinning of the forest canopy, necessary
21 to create and maintain a healthy forest parcel.

22 3.8 Around the time the surveys were completed, in addition to overgrowth, the
23 Plaintiffs made the Board aware of large amounts of garbage, rubbish and debris, including drug
24 paraphernalia, littered throughout the Community Park area, giving rise to safety concerns
25 including the possibility of a fire hazard. Notwithstanding repeated complaints made to the Board
26 to control the overgrowth and clean up the Community Park, no reserve funds have been

1 appropriated towards the cleanup effort in fourteen years and what efforts have been expended
2 have been grossly inadequate. At the same time, a number of makeshift homeless encampments
3 and bunkers were identified within the Community Park. Photographs depicting these conditions
4 were provided to the Board. Despite requests from multiple homeowners, the Association has
5 failed to take any action to obtain a “no trespass” order with the Pierce County Sheriff to address
6 the issue.

7 3.9 The Association, acting by and through its duly elected Board, has failed to properly
8 manage the overgrowth and otherwise maintain the Community Park area in accordance with its
9 duties under the CCRs, resulting in damage to the forest lying within the Community Park Area.

10 3.10 Notwithstanding the receipt of the requested forestry and geotechnical reports, the
11 Association Board denied the Grayhawk Owners’ request without basis or explanation. A
12 subsequent reconsideration request was also ignored and/or denied on or around August 17, 2015,
13 asserting rationale for the Board’s decision that had nothing to do with the Board’s review of the
14 updated geotechnical and arborist reports which clearly supported the proposition that proper
15 forest canopy maintenance would not only maintain views but also would enhance the health of
16 the forested Community Park, which is part of the Common Areas.

17 3.11 The Association, acting by and through its duly elected Board, without contrary
18 expert opinion or other information to help form its review of the Grayhawk Owners’ request,
19 exercised its discretion in an arbitrary and capricious manner, contrary to the rights of the
20 Grayhawk Owners and contrary to the duties of the Association.

21 **IV. DECLARATORY RELIEF**

22 4.1 Plaintiffs restate and reallege Paragraphs 1.1 through 3.11 above.

23 4.2 Defendant Association has acted on Plaintiffs’ maintenance request contrary to the
24 express or implied intent, terms, and conditions of the Master CCRs and HOA published ACC
25 procedures, and in an arbitrary and capricious manner. Plaintiffs have put Defendant on notice of
26 Plaintiffs’ assertion of their rights in this regard and said demands have been ignored and/or

1 disputed by Defendant. As such, Plaintiffs seek a judicial determination and declaratory relief as
2 to Plaintiffs' rights and Defendant's obligations under the terms and conditions of the Master
3 CCRs.

4 4.3 Plaintiffs request an award of their reasonable attorney fees and costs incurred in
5 this action pursuant to the applicable provision of the Master CCRs.

6 **V. INJUNCTIVE RELIEF**

7 5.1 Plaintiffs restate and re-allege Paragraphs 1.1 through 4.3 above.

8 5.2 Defendant's actions in exercising its discretion in an arbitrary and capricious
9 manner, is contrary to the intent, terms, and conditions of the Master CCRs and have caused and
10 are continuing to cause Plaintiffs ongoing harm.

11 5.3 Defendant's actions are causing Plaintiffs to directly and proximately experience
12 damages, including the loss of use and enjoyment of their view homes and the impact to their
13 property values.

14 5.4 Plaintiffs have and will continue to suffer immediate and irreparable injury if a
15 temporary restraining order, preliminary injunction, and permanent injunction are not issued
16 restricting Defendant from withholding approval of Plaintiffs' tree pruning and maintenance
17 requests, as supported by geotechnical and certified arborist expert review and analysis as to the
18 requested scope of work.

19 **VI. BREACH OF FIDUCIARY DUTY**

20 6.1 Plaintiffs restate and re-allege Paragraphs 1.1 through 5.4 above.

21 6.2 Defendant has at all times material to the facts alleged in this complaint been the
22 homeowner's association for all homeowners in the Grayhawk subdivision;

23 6.3 Defendant Association is tasked with certain duties and obligations as more fully
24 set forth in the Master CCRs and pursuant to the same, is solely authorized to take any necessary
25 or appropriate action with respect to the maintenance or upkeep of the common areas.
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