

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 S. Tejon Colorado Springs, CO 80903	EFILED Document CO El Paso County District Court 4th JD Filing Date: May 5 2009 3:33PM MDT Filing ID: 25031897 Review Clerk: Donna Maes
Plaintiffs: MICHAEL COLGATE and BARBARA COLGATE vs. Defendants: GOLDEN HILLS HOMEOWNERS ASSOCIATION, a Colorado Nonprofit Corporation, and all unknown persons who claim any interest in the subject matter of this action	<u>COURT USE ONLY</u>
Defendants' Attorney: Lenard Rieth #2942 Stephen J. Lebel # 8367 Bryce Meighan #34979 ANDERSON, DUDE & LEBEL, P.C. 111 South Tejon, Suite 400 Colorado Springs, CO 80903 Telephone: (719) 632-3545 Facsimile: (719) 632-5452 e-mail: lrieth@adllaw.com	Case Number: 2008CV3403 Div: 13
ANSWER	

COMES NOW Defendant Golden Hills Homeowners Association, by and through its counsel, ANDERSON, DUDE & LEBEL, P.C., hereby responds as follows to the similarly numbered allegations set forth in the Complaint Under Rule 105 of Plaintiffs Michael Colgate and Barbara Colgate as follows:

1. Admitted.
2. Admitted.
3. Admitted, but Defendant affirmatively states that there are other parties interested in the subject matter of this action who are not named in Plaintiffs' Complaint, as set forth in the Defendant's Motion in the Alternative to Dismiss for Failure to Join Indispensible Parties or to Require Joinder filed herewith.
4. Admitted.
5. Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶5 of Plaintiffs' Complaint; and denies each and every other allegation contained in ¶5 of the Complaint

6. Defendant admits that a house and landscaping exists at 6540 Arequa Ridge Lane but Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶6 of Plaintiffs' Complaint; and denies each and every other allegation contained in ¶6 of the Complaint

7. Defendant admits that a fence exists at 6540 Arequa Ridge Lane but Defendant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶7 of Plaintiffs' Complaint. Defendant affirmatively states that Plaintiffs have requested that they had obtained approval for the construction of their fence as required by the Declaration of Covenants described below.

8. Denied. Defendant affirmatively states that Plaintiffs cannot "occupy" an area wherein they have both an easement and permission to place a fence.

9. Denied.

10. Defendant incorporates its answers to ¶¶ 1 through 9 as though fully set forth herein.

11. Denied.

12. Denied.

13. Denied

14. Denied. Defendant affirmatively states that the Declaration of Covenants described below, which governs these parties, bars vesting of this property in anyone other than Defendant.

15. Defendant admits that Defendant and its homeowner members claim various rights, titles and interests in the portions of the Common Areas the subject of this action and denies the remaining allegations contained in ¶15 of Plaintiffs' Complaint.

16. Defendant denies each and every allegation not specifically admitted above.

AFFIRMATIVE DEFENSES

1. All of the Plaintiffs' claims are barred by the Defendant's Revised and Restated Declaration of Covenants, Conditions and Restrictions recorded on December 13, 1993 in Book 6333 beginning at Page 62 (the "Declaration of Covenants") a copy of which is attached hereto as **Exhibit "A"**.

2. Section 1. Article III of the Declaration of Covenants that governs these parties and their properties states that: "title to the Common Area to remain in the name of Golden Hills Homeowners Association and are subject to the Revised and Restated Declaration."

3. The Complaint, in whole or in part, fails to state claims upon which relief can be granted as against the Defendant.

4. The claims in Plaintiffs' Complaint are barred or reduced, in whole or in part, by the Plaintiffs' own contributory or comparative negligence and/or comparative fault or other wrongful conduct.

5. All or some of the claims in Plaintiffs' Complaint are barred for failure to satisfy conditions precedent.

6. Plaintiffs' holding is not hostile, as they have asserted that they obtained permission from the Association to erect their fence.

7. The claims in Plaintiffs' Complaint are barred pursuant to the doctrines of waiver and estoppel.

8. The claims in Plaintiffs' Complaint may be barred by the reciprocal fiduciary duties owed by members of homeowners associations.

9. Plaintiffs' Complaint fails to join parties under C.R.C.P. Rule 19.

WHEREFORE, having fully answered the Complaint, Defendant Golden Hills Homeowners Association prays that the Complaint against it be dismissed and at no cost, that it recovers its costs and attorneys' fees herein, and for such other and further relief as the Court may deem just and proper.

Done this 5th of May, 2009.

ANDERSON, DUDE & LEBEL, P.C.

/s/ original signature on file

By: _____

Lenard Rieth
Stephen J. Lebel
Bryce Meighan

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2009, a copy of the foregoing ANSWER was served via Lexis Nexis File & Serve on the following:

Debra L. Fortenberry, P.C.
660 Southpointe Court, Suite 210
Colorado Springs, CO 80906

/s/ original signature on file

Roni Reynolds