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CASE NUMBER: 2021CV30026

<p>DISTRICT COURT, COUNTY OF LAS ANIMAS, STATE OF COLORADO Court Address: 200 East First Street Trinidad, CO 81082 Telephone: 719-846-3316</p>	
<p>PLAINTIFFS: HEIDI MARIE FRESQUEZ, JAMES PATRICK FRESQUEZ, MARC WILSON, SARA ANN WILSON, CARMEN RICHARDS, JOSEPH RICHARDS, JERRY BARNES, and ANN KOST</p> <p>v.</p> <p>DEFENDANTS: SANTA FE TRAIL RANCH PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, and ROBERT L. SCOTT</p>	<p>COURT USE ONLY</p>
<p><u>Attorney for Plaintiffs:</u> Daniel B. Miller, #49421 JENSEN DULANEY LLC 1955 N. Union Blvd., Ste. 200 Colorado Springs, CO 80909-2213 Telephone: (719) 362-5561 Email: dmiller@jensendulaney.com</p>	<p>Case Number: Division:</p>
COMPLAINT	

COME NOW Heidi Marie Fresquez, James Patrick Fresquez, Marc Wilson, Sara Ann Wilson, Carmen Richards, Joseph Richards, Jerry Barnes, and Ann Kost (collectively, “Plaintiffs”), who bring the following complaint against Defendants Santa Fe Trail Ranch Property Owners Association (hereinafter, the “Association”) and Robert L. Scott, stating and alleging as follows:

INTRODUCTION

1. This civil action relates to real property within the Santa Fe Trail Ranch community (the “Ranch”), the Association, and the documents that govern the Ranch and the Association.
2. With this civil action, Plaintiffs seek enforcement of their rights under the documents that govern the Ranch and the Association (collectively, the “Governing Documents”).

PARTIES AND VENUE

3. Heidi Marie Fresquez is an owner of real property within the Ranch.
4. James Patrick Fresquez is an owner of real property within the Ranch.
5. Marc Wilson is an owner of real property within the Ranch.
6. Sara Ann Wilson is an owner of real property within the Ranch.
7. Carman Richards is an owner of real property within the Ranch.
8. Joseph Richards is an owner of real property within the Ranch.
9. Jerry Barnes is an owner of real property within the Ranch.
10. Ann Kost is an owner of real property within the Ranch.
11. The Association is a Colorado nonprofit corporation located in the County of Las Animas, Colorado.
12. From February 1, 2012, to the date on which this Complaint was filed, the Association has had delinquent status with the Colorado Secretary of State.
13. Robert L. Scott is an owner of real property within the Ranch.
14. Venue is proper before this Court pursuant to C.R.C.P. 98 because the Association and Mr. Scott are found in Las Animas County, Colorado.
15. All acts complained of herein took place in Las Animas County, Colorado.

GENERAL ALLEGATIONS

Background

16. Heidi Marie Fresquez and James Patrick Fresquez own certain real property situated in Las Animas County, Colorado, known as 33440 Alpine Meadows Dr., Trinidad, CO 81082. This real property is also known as Lot G17. Ms. and Mr. Fresquez reside at this location.
17. Marc Wilson and Sara Ann Wilson own certain real property situated in Las Animas County, Colorado, known as 33211 Alpine Meadows Dr., Trinidad, CO 81082. This real property is also known as Lot F35. Mr. and Ms. Wilson reside at this location.

18. Carmen Richards and Joseph Richards own certain real property situated in Las Animas County, Colorado, known as 33476 Alpine Meadows Dr., Trinidad, CO 81082. This real property is also known as Lot G13. Ms. and Mr. Richards reside at this location.
19. Jerry Barnes owns certain real property situated in Las Animas County, Colorado, known as 33374 Alpine Meadows Dr., Trinidad, CO 81082. This real property is also known as Lot F44. Mr. Barnes resides at this location.
20. Ann Kost owns certain real property situated in Las Animas County, Colorado, known as 33389 Alpine Meadows Dr., Trinidad, CO 81082. This real property is also known as Lot F45. Ms. Kost resides at this location.
21. The Santa Fe Trail Ranch community is a common interest community located in Las Animas County, Colorado, to the west of Interstate Highway 25 near the border between Colorado and New Mexico.
22. A map of the Ranch is attached as Exhibit 1.
23. Upon information and belief, the Ranch's geographic area is approximately 16,800 acres.
24. Upon information and belief, there are approximately 454 parcels of real property within the Ranch.
25. Upon information and belief, all or nearly all of the parcels within the Ranch are approximately 35 acres in area each.
26. All of the real property referenced in paragraphs 16 through 20 above is part of the Ranch.
27. The Association is the property owners association for the Ranch.
28. The Association is managed by its Board of Directors (the "Board").
29. Robert L. Scott is a member of the Board and the president of the Board.
30. The Association is subject to the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. § 38-33.3-101, et seq.
31. The Association is subject to the Colorado Revised Nonprofit Corporation Act ("CRNCA"), § C.R.S. 7-121-101, et seq.
32. The Association is governed by and subject to Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Santa Fe Trail Ranch (the

“Declaration”), which was recorded with the Clerk and Recorder of Las Animas County, Colorado on June 13, 2017, book 1137, page 70, at reception no. 737853.

33. The Declaration is one of the Governing Documents.
34. Each of Plaintiffs is an “Owner” as defined by Section 1.3 of the Declaration.

The Declaration’s Provisions Regarding Rights of Way for Ingress and Egress

35. Section 1.5 of the Declaration defines “Common Area” as follows:

“Common Area” shall mean all areas reserved by and for the Association (including improvements thereto) and all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is described as follows: **Rights of way for roads, and public areas as shown on plat maps recorded in the office of the Clerk and Recorder for Las Animas County, Colorado.**

(Emphasis added.)

36. Section 2.2 of the Declaration provides that “every Owner and such Owner’s family Members [sic], guests and licensees shall have an easement of ingress and egress over, across and upon the Common Areas for purposes of getting to and from such Owner’s individual Lot and the public way for equestrian, pedestrian and vehicular travel.”
37. Section 5.3 of the Declaration of Covenants states, in pertinent part, that “[t]here shall be no obstruction of the Common Area.”

The Exit 2 Road

38. On December 30, 1994, a Plat Map for Santa Fe Trail Ranch Unit 10 (the “Unit 10 Plat Map”) was recorded with the Clerk and Recorder of Las Animas County, Colorado at book 911, page 550, reception no. 609522.
39. The Unit 10 Plat Map identifies a right of way for a road located primarily on Lot G17 and Lot G18 of the Ranch.
40. The right of way for a road located primarily on Lot G17 and Lot G18 of the Ranch, hereinafter referred to as the “Exit 2 Road,” provides a means of ingress and egress between Interstate Highway 25’s Exit 2 and Alpine Meadows Drive.

41. The portion of the Exit 2 Road located on Lots G17 and G18 is part the “Common Area” as defined by the Declaration.
42. For several years, Owners of lots within the Ranch and their family members, guests, and licensees could access the Ranch from two exits on Interstate Highway 25: Exit 2 (by way of the Exit 2 Road) and Exit 6, which is approximately four miles to the north of Exit 2.

The Association Unlawfully Closes the Exit 2 Road

43. The Association installed a gate across the Exit 2 Road on Lot G17. The gate was secured by a combination padlock, and the combination was made available to all owners within the Ranch who desired to use the road for purposes of ingress and egress.
44. Until May 1, 2021, Owners and their family members, guests and licensees could use the Exit 2 Road as a means of ingress and egress to lots by unlocking the combination padlock, opening the gate, proceeding through the gate, closing the gate, and then locking the combination padlock.
45. On April 3, 2021, the Board held a meeting. At this meeting, the Board: (a) stated that it desired to discontinue any use of the Exit 2 Road and (b) voted unanimously to permanently close the Exit 2 Road beginning May 1, 2021.
46. On May 1, 2021, Robert L. Scott removed the existing combination lock on the gate and replaced it with a key padlock.
47. Despite the decision to permanently close the Exit 2 Road, Mr. Scott provided a key to this padlock to Heidi Fresquez and a few other owners who live near the Exit 2 Road. The vast majority of owners within the Ranch, however, did not receive a key to the new padlock.
48. Since May 1, 2021. Owners and their family members, guests, and licensees have not been able to use the Exit 2 Road. For purposes of ingress and egress from their homes, they are forced to travel through the Ranch to I-25’s Exit 6.
49. Because they are not able to use Exit 2, trips to Raton, New Mexico and other destinations to the south have been increased unnecessarily by approximately twenty minutes each way.

The Association Has Failed to Maintain the Exit 2 Road

50. Under Section 6.2 of the Declaration, the Association has a duty to complete “repair and reconstruction” of any part of the Common Areas that has been “damaged or destroyed.”
51. Under Section 4.2 of the Declaration, the Association has a duty to use assessments for the purpose of repairing, replacing, and maintaining, Common Areas.
52. Under Section 4.2 of the Declaration, the Association has a duty to use assessments for the purpose of installing, maintaining, and repairing all roads that run across, over, or under any part of the Ranch.
53. Despite the provisions of the Declaration set forth in paragraphs 50 through 52 above, the Association has failed to maintain the portion of the Exit 2 Road located on Lots G17 and G18.
54. As a result of the Association’s failure to maintain the Exit 2 Road, Plaintiffs have had to expend through own time, energy, and money to maintain the Exit 2 Road.

FIRST CLAIM

(Violation of the Declaration Against the Association)

55. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint by reference, as if fully set forth herein.
56. “Any right or obligation declared by [CCIOA] is enforceable by judicial proceeding.” C.R.S. § 38-33.3-114(2).
57. “The remedies provided by [CCIOA] shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.” C.R.S. § 38-33.3-114(1).
58. CCIOA expressly authorizes a civil action to enforce the provisions of a declaration of covenants and other governing documents. C.R.S. § 38-33.3-123(1)(b)–(c).
59. The Association did not have authority under the Declaration to permanently close the Exit 2 Road.
60. By permanently closing the Exit 2 Road, the Association violated the Declaration.
61. By obstructing the Exit 2 Road, the Association violated the Declaration.

62. By failing to maintain the Exit 2 Road, the Association violated the Declaration.
63. Plaintiffs have incurred damages proximately caused by the Association's violations of the Declaration.
64. Plaintiffs are entitled to injunctive relief based upon the Association's violations of the Declaration.

SECOND CLAIM

(Violation of the Declaration Against Robert L. Scott)

65. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint by reference, as if fully set forth herein.
66. "Any right or obligation declared by [CCIOA] is enforceable by judicial proceeding." C.R.S. § 38-33.3-114(2).
67. "The remedies provided by [CCIOA] shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed." C.R.S. § 38-33.3-114(1).
68. CCIOA expressly authorizes a civil action to enforce the provisions of a declaration of covenants and other governing documents. C.R.S. § 38-33.3-123(1)(b)-(c).
69. By obstructing the Exit 2 Road, Robert L. Scott violated the Declaration.
70. Plaintiffs have incurred damages proximately caused by Mr. Scott's violation of the Declaration.
71. Plaintiffs are entitled to injunctive relief based upon Mr. Scott's violation of the Declaration.

THIRD CLAIM

(Breach of Fiduciary Duty Against the Association)

72. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint by reference, as if fully set forth herein.
73. Under Colorado law, the Association has a fiduciary duty to Plaintiffs to enforce the provisions of the Declaration in good faith and in a reasonable manner.

74. By permanently closing the Exit 2 Road, the Association violated its fiduciary duty to Plaintiffs.
75. By obstructing the Exit 2 Road, the Association violated its fiduciary duty to Plaintiffs.
76. By failing to maintain the Exit 2 Road, the Association violated its fiduciary duty to Plaintiffs.
77. Plaintiffs have incurred damages proximately caused by the Association's breaches of its fiduciary duty to Plaintiffs.
78. Plaintiffs are entitled to injunctive relief based upon the Association's breaches of its fiduciary duty to Plaintiffs.

FOURTH CLAIM

(Declaratory Judgment Against the Association)

79. Plaintiffs incorporate paragraphs 1 through 54 of this Complaint by reference, as if fully set forth herein.
80. An actual controversy exists between Plaintiffs and the Association regarding use of the Exit 2 Road.
81. Plaintiffs are persons with interests under the Governing Documents. As such, Plaintiffs are persons that may obtain a declaration of rights, status, or other legal relations under the Governing Documents.
82. A declaratory judgment by this Court as to Plaintiffs' rights relating to the Exit 2 Road will settle and determine the controversy between Plaintiffs and the Association.
83. The Court's issuing a declaratory judgment in this case will terminate any uncertainty giving rise to these proceedings.
84. Plaintiffs are entitled to a judgment declaring that (a) the Association violated the Declaration by permanently closing the Exit 2 Road, (b) the Association violated the Declaration by obstructing the Exit 2 Road, (c) the Association violated the Declaration by failing to maintain the Exit 2 Road, and (d) Owners of lots within the Ranch, and their family members, guests, and licensees are entitled to the unobstructed use of the Exit 2 Road for purposes of ingress and egress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendants and that the Court grant the following relief:

1. A declaration that (a) the Association violated the Declaration by permanently closing the Exit 2 Road, (b) the Association violated the Declaration by obstructing the Exit 2 Road, (c) the Association violated the Declaration by failing to maintain the Exit 2 Road, and (d) Owners of lots within the Ranch, and their family members, guests, and licensees are entitled to the unobstructed use of the Exit 2 Road for purposes of ingress and egress;
2. Damages proximately caused by Defendants' violations of the Governing Documents and the Association's breaches of its fiduciary duty to Plaintiffs;
3. Injunctive relief enjoining Defendants from violating the Governing Documents;
4. Prejudgment and post-judgment interest;
5. An award of Plaintiffs' reasonable costs and expenses, including attorneys' fees, legal fees, and expenses that are recoverable under CCIOA and/or the Declaration; and
6. Other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demands a jury trial, pursuant to C.R.C.P. 38, on all issues so triable.

Dated this 5th day of July, 2021.

JENSEN DULANEY LLC

/s/ Daniel B. Miller
Daniel B. Miller, # 49421

Addresses of Plaintiffs:

Heidi Fresquez and Jamie Fresquez
33440 Alpine Meadows Dr.
Trinidad, CO 81082

Marc Wilson and Sara Ann Wilson
33211 Alpine Meadows Dr.
Trinidad, CO 81082

Carmen Richards and Joseph Richards
33476 Alpine Meadows Dr.
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Jerry Barnes
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Ann Kost
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