

<p>COLORADO COURT OF APPEALS 2 East 14th Avenue, 3rd Floor Denver, CO 80203</p>	
<p>El Paso County District Court Honorable Larry E. Schwartz Case No. 2008CV2923, Division 5 Ctrm. 501</p>	
<p>Appellants: WOODMEN HILLS COVENANT MANAGEMENT BOARD and WOODMEN HILLS METROPOLITAN DISTRICT v. Appellees: CHARLES WARNE, BRIDGET WARNE, BRANDON CUFFE, NORMAN VILLANUEVA, NANCY VILLANUEVA, HOWARD SURBER, LUANA SURBER, TRAVIS HELTON, and KAREN HELTON</p>	<p>COURT USE ONLY</p>
<p>Attorneys for Appellants: SUSEMIHL, McDERMOTT & COWAN, P.C. Jason W. Downie, Atty Reg. # 27256 Geoffrey L. Lindquist, Atty Reg. # 38290 660 Southpointe Court, Suite 210 Colorado Springs, CO 80906 Phone: 719-579-6500 Fax: 719-579-9339 Email: jdownie@smmclaw.com</p>	<p>Case Number:</p>
<p style="text-align: center;">NOTICE OF APPEAL</p>	

Appellants, by their attorneys, Susemihl, McDermott & Cowan, P.C., file the following Notice of Appeal pursuant to C.A.R. 3(f) and 4(a).

I. DESCRIPTION OF NATURE OF THE CASE

A. Nature of the Controversy.

In late 2006, the residents within Woodmen Hills had become increasingly worried about the enforcement of covenants after the builders and declarants of the covenants were finishing their projects. The Woodmen Hills Metropolitan District (the “District”) also has an interest in higher property values that result from proper covenant enforcement – which at the time was

extremely lacking. The solution was to approach the several builders and declarants of covenants and ask them to contract and assign the right to enforce the covenants to the District pursuant to C.R.S. § 32-1-1004(8)(a)(1). The District would then contract and assign the right to enforce the covenants to a new nonprofit corporation, the Woodmen Hills Covenant Management Board (the “Covenant Board”). The Covenant Board would be controlled by the residents of the District. The District would fund covenant enforcement through the fees and charges under C.R.S. § 32-1-1001(1)(j)(I).

The contract and assignments were executed and recorded, the Covenant Board was set up, and the process of covenant enforcement via the District and the Covenant Board began as planned. The Covenant Board hired a management company in late 2007 and began enforcement in early 2008.

Several residents in Woodmen Hills Filings 8 & 9 who are subject to the Declaration filed by Melody Homes obtained counsel and filed this current declaratory relief action on June 6, 2008. In July 2008, Covenant Board brought a county court action against Travis and Karen Helton (08C19593). The Heltons obtained counsel and counterclaimed against the Covenant Board and the two cases were consolidated.

Appellants asked the trial court to require the Appellees to join all property owners subject to the covenants. On September 18, 2008, the trial court denied Appellants’ Motion to Join Property Owners.

The parties filed Cross Motions for Summary Judgment and the Appellees’ Motion for Summary Judgment was granted on May 20, 2009.

B. Decision or Order Being Appealed and Statement of Basis of Jurisdiction.

Appellants appeal from the trial court's September 18, 2008 Order re: Motion for Order to Join Property Owners.

Appellants appeal from the trial court's May 20, 2009 Order re: Motion for Summary Judgment. A copy is attached in the Appendix.

This Court has jurisdiction to review the trial court's order pursuant to C.A.R. 4(a).

C. Whether the Decision or Order Resolved All Issues Before the Trial Court.

The trial court's Order, dated May 20, 2009, resolved all issues pending before the trial court.

D. Whether Decision was Final for Purposes of Appeal Pursuant to C.R.C.P. 54(b).

Not applicable.

E. Date Decision or Order was Entered and Mailed.

On May 20, 2009, the trial court entered and served on all counsel the Order Re: Motion for Summary Judgment.

F. Whether an Extension of Time was Granted to File Post-Trial Relief.

No such motions have been filed or granted.

G. Date any Motion for Post-Trial Relief was Filed.

On June 4, 2009, Appellees filed a Motion for Entry of Money Judgment Amount and for Award of Pre-Judgment Interest.

H. Date any Motion for Post-Trial Relief was Denied.

Appellees' Motion for Entry of Money Judgment Amount, dated June 4, 2009, has not been ruled upon.

I. Whether Extension was Granted to File any Notice of Appeal.

No extensions to file a Notice of Appeal have been requested or granted.

II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

- a. Whether the trial court erred by denying Appellants' Motion for Order to Join Property Owners.
- b. Whether the trial court erred by granting summary judgment in favor of the Appellees on the following issues:
 - i. Whether the Contract and Assignment of Right to Enforce Covenants, filed in the real property records of El Paso County, Colorado at Reception Number 207145595, is void, voidable, or invalid.
 - ii. Whether the Contract and Assignment of Right to Enforce Covenants, filed in the real property records of El Paso County, Colorado at Reception Number 207146008, is void, voidable, or invalid.
 - iii. Whether the Amendment to the Declaration of Covenants, Conditions and Restrictions for Woodmen Hills Filing No. 8 and a Portion of Filing No. 9, filed in the real property records of El Paso County, Colorado at Reception Number 203034235, is the controlling document for the owners in Woodmen Hills Filing No. 8 and a Portion of Filing No. 9.
 - iv. Whether the Appellants have authority to attempt enforcement of the covenants and whether the Appellants have authority to assess penalties/fines for alleged covenant violations.
 - v. Whether the Appellants have authority to assess a covenant fee against owners within Woodmen Hills Filing No. 8 and a Portion of Filing No. 9.
 - vi. Whether the declarant of the Declaration, Melody Homes and/or D.R. Horton has any legal right, title, interest, power or claim in or to the properties, covenants or covenant enforcement affecting properties in Woodmen Hills Filing No. 8 and a Portion of Filing No. 9 and whether they could have assigned such rights to the Appellants.
 - vii. Whether an award of costs to Appellees pursuant to C.R.S. § 13-51-114 is proper.

III. TRANSCRIPTS

Neither a hearing nor a trial was held before the trial court; therefore, there are no transcripts from the trial court.

IV. PREARGUMENT CONFERENCE

A pre-argument conference is not requested.

V. IDENTIFICATION OF COUNSEL

Attorneys for Appellants:

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VI. APPENDIX

A. District Court Order dated September 18, 2008 – Order re: Motion for Order to Join Property Owners.

B. District Court Order dated May 20, 2009 – Order Re: Motion for Summary Judgment.

DATED this 6th day of July, 2009.

SUSEMIHL, McDERMOTT & COWAN, P.C.
Original signature on file at the offices of
Susemihl, McDermott & Cowan, P.C.

 /s/ Geoffrey L. Lindquist
Jason W. Downie, Reg. # 27256
Geoffrey L. Lindquist, Reg. # 38290

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was filed and served electronically through LexisNexis File & Serve this 6th day of July, 2009, on the following:

M. Jacqueline Gaithe, PC
M. Jacqueline Gaithe, Atty Reg. # 34348
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Advisory Copy to:
Clerk of the Court
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Colorado Springs, CO 80903

 /s/ Geoffrey L. Lindquist
Geoffrey L. Lindquist