

DISTRICT COURT, PARK COUNTY, COLORADO
300 Fourth Street
Fairplay, Colorado 80440

Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, THE PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A, ROBERT W. PHELPS, and KEVIN O'CONNELL

v.

Defendants: VERA B. DUNWODY, DRAYTON D. DUNWODY, FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association, THE BOARD OF COUNTY COMMISSIONERS PARK COUNTY, COLORADO

Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN

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Case Number: 2010cv65

Div: B

ELK FALLS PROPERTY OWNERS' ASSOCIATION DISCOVERY REQUESTS TO DEFENDANT DRAYTON D. DUNWODY FOR INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSION

Plaintiff Elk Falls Property Owners' Association by its attorneys Montgomery Little & Soran, P.C., request that Defendant Drayton D. Dunwody answer the following interrogatories, requests for production of documents, and requests for admission under C.R.C.P. 33, 34, and 36.

I. PATTERN DEFINITIONS

A. **"Incident"** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

B. “**You or anyone acting on your behalf**” includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

C. “**Person**” includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

D. “**Document**” means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

E. “**Address**” means the street address, including the city, state, and zip code.

II. DEFINITIONS

In addition to the pattern definitions, please also incorporate the following definitions:

A. The term “**Plaintiffs**” refers collectively to the named Plaintiffs in this action: Elk Falls Property Owners’ Association, Kathryn Wells, The Paul Vastola and Suzanne G. Nelson Living Trust, U/A, Robert W. Phelps, and Kevin O’Connell.

B. The term “**Dunwodys**” refers collectively to Defendants Vera B. Dunwody and Drayton D. Dunwody.

C. The term “**Disputed Roads**” refers to the portion of roads that are in dispute in this action which lie in Park County and involve sections of the following roads: Elk Creek Road, a/k/a South Elk Creek Road, a/k/a CR 1184, Juniper Road, Jensen Road, and the two “50-FOOT RIGHT(S) OF WAY” listed on the Block 1 plat map.

D. The term “**Juniper Residence**” refers to the private residence located at 34900 Juniper Road, Pine, Colorado 80470.

E. The term “**Dunwody Property**” refers to the 200 acres of unsubdivided land owned by the Dunwodys, which surrounds the Dunwody Residence, that was purchased by the Dunwodys on or about January 21, 2008.

F. The term “**Title Commitment**” refers to the Security Title commitment and the corresponding documents that the Dunwodys received from Security Title when purchasing the Dunwody Property on January 21, 2008.

G. The term “**Incident**” includes the circumstances and events surrounding the alleged occurrence giving rise to this action. To wit: (1) the Dunwodys placing a saw horse in the middle of Elk Creek Road on or about February 23, 2010; (2) the Dunwodys placing a pole barrier across Elk Creek Road on or about February 23, 2010; (3) the

Dunwodys placing large boulders at the bottom of Juniper Road and Jensen Road, just north of South Elk Creek Road on or about February 23, 2010.

H. The term “**document**” includes any e-mails, computer printouts, maps, plats, drawings, transcripts, surveys, audio recordings, video recordings, and all electronic, mechanical or electric records or representations of any kind, of which you have knowledge or which is now or was formerly in your possession, custody, or control.

I. The phrases “**related to**,” “**relating to**” or “**relates to**” mean supports, evidences, describes, mentions, refers to, contradicts, or comprises.

J. The terms “**identify**,” “**identity**” and “**identification**,” when used to refer to a natural person, means to state the following: the person’s full name and present or last known address and telephone number; the person’s present title and employer or other business affiliation; and the person’s employer and title at the time of the actions of which each interrogatory is directed.

K. The terms “**identify**,” “**identity**” and “**identification**,” when used to refer to a document, mean to state, with sufficient particularity for use in a subpoena duces tecum or request for production of documents, the following:

- (1) the subject of the document;
- (2) the title of the document;
- (3) the type of document;
- (4) the date of the document or if the specific date of the document is unknown, the month and year or other best approximation of such date.

III. INTERROGATORIES

Pattern Interrogatories:

1. Pattern Interrogatory 2.1. State:
 - a. Your name;
 - b. Every name you have used in the past;
 - c. The dates you used each name.
2. Pattern Interrogatory 2.5. State:
 - a. Your present residence address;
 - b. Your residence addresses for the last five years;
 - c. The dates you lived at each address.

3. Pattern Interrogatory 12.2. Have you or anyone acting on your behalf interviewed any individual concerning the incident? If so, for each individual state:

a. The name, address, and telephone number of the individual interviewed;

b. The date of the interview;

c. The name, address, and telephone number of the person who conducted the interview.

4. Pattern Interrogatory 15.1. Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

a. State all facts upon which you base the denial or affirmative defense;

b. State the names, addresses, and telephone numbers of all persons who have knowledge of those facts;

c. Identify all documents and other tangible things which support your denial or affirmative defense, and state the name, address, and telephone number of the person who has each document.

Interrogatories:

5. State the date when you first used the Disputed Roads in any manner.

6. State the number of times that you drove upon, walked upon, jogged upon, rode bicycles upon, and/or used the Disputed Roads in any manner prior to your purchase of the Dunwody Property.

7. Identify all persons that you received and/or requested permission from to use the Disputed Roads in any manner prior to you purchasing the Dunwody Property.

8. Prior to your purchase of the Dunwody Property, what was your understanding of the legal status of the Disputed Roads (e.g. public road, easement, private road)?

a. Describe with specificity your reasons for having the understanding you describe in your answer to Interrogatory No. 8.

9. Identify all persons who have resided at the Juniper Residence since you purchased the Juniper Residence.

10. Describe with specificity each route that you used to access the Juniper Residence prior to your purchase of the Dunwody Property.

a. For each route mentioned in your answer to Interrogatory No. 10, state the number of times that you used such route to access the Juniper Residence prior to your purchase of the Dunwody Property.

11. Identify any person currently serving on the Park County Board of County Commissioners with whom you have a business or personal relationship with.

12. Identify any person that you have knowledge of who paid the Elk Falls Sportsman's Club for access to the Disputed Roads.

13. Describe with specificity your reasons for:

a. Placing a saw horse in the middle of Elk Creek Road on or about February 23, 2010;

b. Placing a pole barrier across Elk Creek Road on or about February 23, 2010;

c. Placing large boulders at the bottom of Juniper Road and Jensen Road, just north of South Elk Creek Road, on or about February 23, 2010.

14. Identify all documents relating to any survey relating to the Disputed Roads and/or the Dunwody Property. Within your answer, identify the company or person who conducted the survey, and the date when the survey was completed.

15. Identify all documents supporting your belief that the Disputed Roads are private roads.

16. Identify all people with whom you have had conversations and/or correspondence about the legal status of the Disputed Roads (e.g. public roads, private roads, easements) prior to your purchase of the Dunwody Property in 2008.

17. Identify all people that you have contacted law enforcement on relating to their use of the Disputed Roads. Within your answer, please include the date of each contact.

a. Describe with specificity your reasons for believing that your actions referenced in your answer to Interrogatory No. 17 which occurred after the court issued a Preliminary Injunction Order in the above-captioned matter do not violate such Order.

18. Identify any Elk Falls Subdivision resident that you have knowledge of that was not allowed access to the Disputed Roads prior to your purchase of the Dunwody Property.

19. Identify all persons you contend are currently paying you a fee to access the Disputed Roads.

20. State all facts and identify all documents that support your contention that the Elk Falls Property Owners' Association committed civil conspiracy as stated in your counterclaim.

21. Describe with specificity all facts supporting your assertion that Elk Falls Property Owners' Association members have had secret meetings calling themselves "The Ravens" to discuss how to get rid of the Dunwodys.

22. Describe with specificity all facts supporting your assertion that Plaintiffs were offered an easement for Elk Creek Road and they rejected this offer.

23. Identify all deeds relating to your purchase of the Dunwody Property.

IV. RULE 34 REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Plaintiff Elk Falls Property Owners' Association request under C.R.C.P. 34 that Defendant Drayton D. Dunwody produce and permit Plaintiff Elk Falls Property Owners' Association to inspect and copy each of the following documents:

a. Copies of all correspondence between the Dunwodys and Frederick Wolf, Samuel Shaprio, or Karen Shapiro relating to Jefferson County District Court Case No. 10CV1060 and/or the above-captioned matter.

b. Copies of all non-privileged correspondence with any person relating to the Disputed Roads.

c. Copies of all documents relating to your answer to Interrogatory No. 3.

d. Copies of all the documents listed in or relating to your answer to Interrogatory No. 14, 15, 20, and 23.

e. Copies of all documents relating to your answer to Interrogatory No. 17 including all law enforcement reports.

Defendant Drayton D. Dunwody has in his possession, custody, or control of each of the foregoing documents. Each of them contains evidence relevant and material to a matter involved in this action.

V. RULE 36 REQUESTS FOR ADMISSION

Plaintiff Elk Falls Property Owners' Association requests pursuant to C.R.C.P. 36 that Defendant Drayton D. Dunwody admit:

1. That each of the following documents, exhibited with this request, is genuine:

a. The warranty deed, dated January 21, 2008, relating to the purchase of the Dunwody Property, attached as Exhibit A.

b. The warranty deed, dated October 23, 2006, relating to the purchase of the Juniper Residence, attached as Exhibit B.

c. The Title Commitment and corresponding documents from Security Title relating to the purchase of the Dunwody Property, attached as Exhibit C.

2. That each of the following statements is true:

a. You did not request and/or receive permission from anyone to use the Disputed Roads prior to your purchase the Dunwody Property.

b. You did not pay a fee to anyone to use the Disputed Roads prior to your purchase of the Dunwody Property.

c. You used the Disputed Roads to access the Juniper Residence prior to your purchase of the Dunwody Property.

d. You thought the Disputed Roads were public roads prior to your purchase of the Dunwody Property.

e. The warranty deed attached as Exhibit A excepts the Disputed Roads.

f. The Title Commitment does not include the Disputed Roads.

g. You contacted law enforcement in September of 2010 regarding Fred Wells and/or Katy Wells using the Disputed Roads.

h. Contacting law enforcement on Fred Wells and/or Katy Wells in September of 2010 regarding using the Disputed Roads violated the Court's Preliminary Injunction Order issued in the above-captioned matter.

i. The Elk Falls Property Owners' Association has maintained the Disputed Roads since at least 1968.

j. Elk Falls subdivision residents have used the Disputed Roads since at least 1959.

k. Since you purchased the Dunwody Property, the Elk Falls Property Owners' Association has assisted you in maintaining the Disputed Roads.

l. A majority of the Elk Falls subdivision residents currently use the Disputed Roads on a daily basis.

m. The Elk Falls Sportsman's Club never gave Elk Falls Subdivision residents permission to use the Disputed Roads.

n. A majority of the Elk Falls subdivision residents are supportive of the Elk Falls Property Owners' Association litigating the above-captioned matter on their behalf.

o. During adverse weather, the Disputed Roads are safer to traverse than alternate roads for those persons who frequently use the Disputed Roads to access their residences.

Dated: October 10, 2010.

Respectfully submitted,

MONTGOMERY LITTLE & SORAN, P.C.

By s/ Nathan G. Osborn
Frederick B. Skillern, #7983
Nathan G. Osborn, #38951

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2010, a true and correct copy of the foregoing was duly served to the following via LexisNexis:

Victor F. Boog
3333 S. Wadsworth Blvd., Suite D201
Lakewood, CO 80227

Monica Lester
1125 17th Street
Denver, CO 80202

Kirk B. Holleyman
1050 17th Street, Suite 1700
Denver, CO 80203

Herbert C. Phillips
675 Main Street
Fairplay, CO 80440

Barton L. Enoch
P.O. Box 1539
Colorado Springs, CO 80901

s/Sandra G. Reinke