

DISTRICT COURT, PARK COUNTY, COLORADO

300 Fourth Street
Fairplay, Colorado 80440

Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, PAUL VASTOLA, and ROBERT W. PHELPS

v.

Defendants: VERA B. DUNWODY, and DRAYTON D. DUNWODY

Frederick B. Skillern, #7983
Nathan G. Osborn, #38951
MONTGOMERY LITTLE & SORAN, P.C.
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Case Number: 2010cv65

Div: B

PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT AND SUBSTITUTE PLAINTIFF

Plaintiffs, through their attorneys, Montgomery Little & Soran, P.C., respectfully request that the Court grant Plaintiffs leave to amend their Complaint, and as grounds therefore state:

Certificate of Conferral, CRCP 121, § 1-15: Counsel for Plaintiffs contacted Counsel for Defendants regarding this motion. As of the time of filing, Counsel for Defendants has not verified whether he is objecting to the contents of this motion.

1. Plaintiffs filed their Complaint on February 26, 2010 on an expedited basis, requesting injunctive relief to address exigencies related to interference with historical access to the Elk Falls Ranch Subdivision.

2. Since February 26, 2010, Plaintiffs have conducted further investigation and received additional new information that necessitates amending their Complaint. Further, Plaintiffs have determined that minor factual mistakes exist in the original Complaint.

3. It was recently brought to Plaintiffs' counsel's attention that the owner of Plaintiff Paul Vastola's Elk Falls residence – 33629 Berg Lane, Pine, Colorado 80470 – is the Paul J. Vastola and Suzanne G. Nelson Living Trust, U/A dated August 10, 2001 (the "**Living Trust**").

The co-trustees for the Living Trust, and the people authorized to execute instruments affecting title to real property on behalf of the Living Trust, are Paul J. Vastola and Suzanne G. Nelson. In light of this, Plaintiffs wish to substitute the Living Trust for Paul Vastola, individually, as a party in this action.

4. Farm Credit of Southern Colorado, ACA (“**Farm Credit**”) is an agricultural credit association doing business in Colorado. Its business address is 3625 Citadel Drive South, Colorado Springs, Colorado 80932. Farm Credit operates under the Farm Credit Administration. Farm Credit provided the mortgage to the Dunwodys to purchase the Dunwody Property on January 21, 2008. In light of this, Plaintiffs wish to add Farm Credit as a Defendant in this action.

5. Kevin O’Connell (“**O’Connell**”) owns and maintains a residence in Block 1, Elk Falls at 34676 Circle Drive, Pine, Colorado 80470. O’Connell has an interest in litigating access to the Disputed Roads as an individual homeowner and as a representative Block 1 member of the Elk Falls Property Owners’ Association.

6. C.R.C.P. Rule 15 allows a party to amend his pleading by leave of court. C.R.C.P. Rule 15 further mandates that “leave shall be freely given when justice so requires.”

7. Plaintiffs wish to amend their Complaint to correct factual mistakes that have come to their attention since filing of the Complaint, to add Farm Credit as a party to bring all necessary parties for adjudication of the Disputed Roads before the court, to add Kevin O’Connell as a plaintiff representative of Block 1 homeowner association members, to substitute the “Living Trust” as a Plaintiff in this action, and to plead additional relevant facts.

8. The requested amendments will aid in the administration of justice by better framing the legal and factual issues before the court.

9. Leave to amend will not interpose any delay in this proceeding.

10. “The rule [C.R.C.P. Rule 15] prescribes a liberal policy of amendment and encourages the courts to look favorably on requests to amend. Although leave to amend is not to be granted automatically, the court should not impose arbitrary restrictions on the application of the rule or exercise its discretion in a manner that undercuts its basic policy. Pleadings are not sacrosanct, and amendments thereto should be granted in accordance with the overriding purposes of our rules of civil procedure – ‘to secure the just, speedy, and in-expensive determination of every action.’” *Polk v. The Denver District Court*, 849 P.2d 23, 25 (1993); *See also: Eagle River Mobile Home Park v. District Court*, 647 P.2d 660 (1982); and *Brown v. Schumann*, 40 Colo. App. 336 (1978).

11. Allowing for amendment will not prejudice Defendants.

12. A proposed Amended and Restated Complaint incorporating the requested amendments is attached hereto.

WHEREFORE, the Plaintiffs respectfully request an order granting leave to allow Plaintiffs to amend their Complaint in the particulars set forth in the attached Amended and

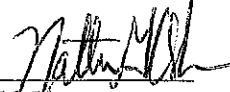
Restated Complaint – including substituting the Living Trust for Paul Vastola, individually, as a party in this action, adding Kevin O’Connell as a plaintiff, and adding Farm Credit of Southern Colorado, ACA as a defendant.

Dated: July 9, 2010.

Respectfully submitted,

MONTGOMERY LITTLE & SORAN, P.C.

s/ Nathan G. Osborn
Nathan G. Osborn, #38951



CERTIFICATE OF SERVICE

I hereby certify that on July 9, 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
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s/Vicki Fields



In accordance with C.R.C.P. 121 § 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.