



MISC 2009041816



APR 30 2009 11:05 P 5

Nullifiles 2005155319

Misc 68-14276-R.1.
 FEE 56.00 FB 68-14275.
 BKP _____ C/D _____ COMP 86
 DEL _____ SCAN _____ FV _____

Received - DIANE L BATTIATO
Register of Deeds, Douglas County, NE
4/30/2009 11:05:16.71



2009041816

THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

The land(s) affected by the following include(s):

LOTS 79 THROUGH 138, INCLUSIVE, EXCLUDING LOT 102,
 GREENFIELDS, AND OUTLOT 1, GREENFIELDS, ALONG WITH
 THAT PORTION OF OUTLOT 1 REPLATTED INTO
 GREENFIELDS REPLAT 1 AND LOTS 1 AND 2 OF
 GREENFIELDS REPLAT 1,
 A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED
 IN DOUGLAS COUNTY, NEBRASKA.

Return To: JAY A FERGUSON
1823 HARNEY STREET #1013
OMAHA, NEBRASKA 68102

Check Number
708A

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SHERRI ARNETT and JON R. ARNETT,)
JAMES S. ALLEN and JULIE ALLEN,)
ROBERT L. MILLER, DEBBIE)
FINNICUM and DOUG FINNICUM,)
BERNARD CLARK and KAY CLARK,)
and MARK M. DAVIS,)
Plaintiffs,)

vs.)

EDWARD M. CUMMINGS and)
GREENFIELDS NATURE SANCTUARY)
d/b/a GREENFIELDS HOMES)
ASSOCIATION,)
Defendants.)

DOCKET 1093 PAGE 530

PARTIAL
SUMMARY JUDGMENT

FILED
JOURNAL CLERK

APR 28 2009

JOHN M. FRIEND
CLERK DISTRICT COURT

On April 28, 2009, this matter came before this Court for hearing on Defendants' Motion for Partial Summary Judgment. Plaintiffs appeared through counsel, Brian C. Doyle. Defendants appeared through counsel, Jay A. Ferguson. Based upon the pleadings and argument of counsel, this Court finds that there is no genuine issue of fact concerning:

1. The 1994 signed resolution of 77% of the members was seen as sufficient by the Board to direct and authorize the formation and operation of Greenfields, as it exceeded the 75% thought necessary to modify the covenants and the 2/3rds thought necessary to dedicate the lands as a sanctuary. However, during 1994, 90% of the owners would have had to have signed to authorize modification of the covenants, and although more than 2/3rds had signed requesting the dedication, which was sufficient under another section, no document was recorded as required by the Original Declaration. Therefore, amendments to the covenants and the dedication were not properly authorized, and the Board should not have caused

the filing of the 2005 Declaration.

2) The Board of Greenfields, ^{Nature Sanctuary PUB} and each of its Board members, maintained that the membership of Greenfields was the owners of the lots. Plaintiffs take the position that there never was mutual assent or meeting of the minds on this subject by all members sufficient to form any agreement among the parties. The owners, except for incorporator Cummings, should then be determined to not be members of Greenfields.

The Court finds that the 2005 Declaration filed in the Douglas County Register of Deeds at 2005155319 should be declared as a nullity, of no further effect, and a filing made to reflect this finding, and that the lot owners of Greenfields, except for incorporator Edward M. Cummings, should be determined to not be members of Greenfields Nature Sanctuary d/b/a Greenfields Homes Association. Partial Judgment should be entered as a matter of law.


IT IS, THEREFORE, ORDERED AND ADJUDGED that the 2005 Declaration filed in the Douglas County Register of Deeds at 2005155319 is a nullity, of no further effect, and that a certified copy of this judgment shall be filed by Defendants to reflect this finding and Order.

IT IS FURTHER ORDERED AND ADJUDGED that the lot owners of Greenfields, except for incorporator Edward M. Cummings, are not members of Greenfields Nature Sanctuary d/b/a

Greenfields Homes Association.


Dated this 28 day of April, 2009.

BY THE COURT:


District Court Judge

Prepared and Submitted by:

Jay A. Ferguson, (#18059)
Attorney at Law
1823 Harney Street, #1013
Omaha, Nebraska 68102
Telephone (402) 346-1748

Approved as to form & content

Brian Doyle, #23001

STATE OF NEBRASKA,)
) SS

COUNTY OF DOUGLAS)

I certify that I am an official of the Clerk of the District Court, Fourth Judicial District of Nebraska, within and for said County. I do hereby certify that the above and foregoing is a true and correct copy of PARTIAL SUMMARY JUDGMENT, entered of record and designated as Docket 1093 Number 530,

in a cause in said Court wherein SHERRI ARNETT AND JON R. ARNETT; EDWARD L. PEARCE; JAMES S. ALLEN AND JULIE ALLEN; ROBERT L. MILLER; DEBBIE FINNICUM AND DOUG FINNICUM; BERNARD CLARK AND KAY CLARK; and MARK M. DAVIS, plaintiffs,

and EDWARD M. CUMMINGS; AND GREENFIELDS NATURE SANCTUARY D/B/A GREENFIELDS HOMES ASSOCIATION, defendants,

as the same appears fully upon the records and in the files of said Court now in my charge remaining as Clerk aforesaid.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at Omaha, Nebraska, this 28th day of April, A. D. 2009.

BY Helen Klumauer
DEPUTY

