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KING COUNTY
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

HIGHLANDS OF CEDAR RIVER
HOMEOWNERS' ASSOCIATION, INC., a
nonprofit corporation,

Plaintiff,

v.

GEORGE KYCHAKOFF and VIKI
KYCHAKOFF, husband and wife, and their
marital community; MARK MORVICE and
JAYNE MORVICE, husband and wife and
their marital community; CAREY GOETZ
and LESLEE GOETZ, husband and wife,

Defendants.

NO. 05-2-35952-8 KNT

JUDGMENT

(Clerk's Action Required)

I. BACKGROUND

THIS MATTER came before the Court on the parties' stipulated summary judgment motion, requesting entry of a non-monetary judgment on the claims for declaratory relief asserted by Plaintiff, The Highlands of Cedar River Homeowners Association (the "Association"), and Defendants George and Viki Kychakoff and Mark and Jayne Morvice (collectively "Morvice). Plaintiff was represented by Gregory F. Cromwell, and Diana M. Zottman. Defendants Kychakoff and Morvice were represented

1 by Marion E. Morgenstern and Defendants Goetz were represented by Thomas F.
2 Peterson.

3 The parties jointly sought declaratory judgment pursuant to an agreement in
4 which they stipulated to the propriety of the summary judgment proceeding and waived
5 all rights to trial and appeal if the Court was able to resolve the issues presented in the
6 motions on summary judgment. The parties stipulated that the following issues would be
7 presented to the Court for resolution on summary judgment:

8 1. Whether the terms “trees” and “shrubs” used in these sentences in
9 Paragraph 16 of the covenants for Cheryl Lee Heights, Division 3, apply
10 to all trees and shrubs or only to those trees and shrubs planted by man:
11 “No shrubs, trees or bushes shall be planted and allowed to grow to a
12 height which unduly restricts the exposure or view from adjoining
properties. The A.C.C., at its discretion, after an investigation, may
require any offending shrub, tree or bush to be pruned, trimmed or
removed.”

13 2. Whether the phrase “adjoining or facing properties” as used in the
14 following sentences within paragraph 14 and 16 of the covenants for
Cheryl Lee Heights, Division 3, operates to limit construction and
plantings only as to lots which are physically adjacent to each other:

15 Section 14. “. . . . It is further provided that no such construction or
16 plantings shall interfere with the exposure or view or enjoyment of
adjoining or facing properties. Whether or not plantings will interfere
17 with the exposure or view of enjoyment of adjoining or facing properties
shall be determined by A.C.C. in its sole discretion.”

18 and

19 Section 16. “. . . . No shrubs, trees or bushes shall be planted and allowed
20 to grow to a height which unduly restricts the exposure or view from
adjoining properties. The A.C.C., at its discretion, after an investigation,
21 may require any offending shrub, tree or bush to be pruned, trimmed or
removed.”

22 3. Whether the covenants for Cheryl Lee Heights, Division 3, are intended
23 to, and can be applied for the benefit of Division 4 owners to protect views
from lots in Cheryl Lee Heights, Division 4.

24 4. Whether the covenants for Cheryl Lee Heights, Division 4, are intended
25 to, and can be applied for the benefit of Division 3 owners to protect views
from lots in Cheryl Lee Heights, Division 3.

1 5. In tree/view disputes involving owners in Cheryl Lee Heights Divisions 3
2 and 4, who bears the cost of trimming or removing trees, mitigation
3 requirements imposed by King County, and re-landscaping if needed – the
4 Division 3 owner with the tree or the Division 4 owner whose view will be
5 improved by trimming or removal?

6 6. Whether The Highlands of Cedar River Homeowners Association, a
7 nonprofit corporation, has the legal authority to administer and manage
8 properties located in both Cheryl Lee Heights Division 3 and Cheryl Lee
9 Heights Division 4 pursuant to the covenants for each division, and
10 pursuant to the Articles of Incorporation and Bylaws of the Association.

11 The Court considered Plaintiff's motion, defendants' responses, the various
12 declarations submitted by the parties, the argument of counsel during the hearing held
13 April 27, 2007, and supplemental briefing filed by the parties after oral argument. Being
14 fully advised in the premises, the Court hereby enters the following declaratory judgment
15 in this matter based on the findings and conclusions stated in the Memorandum of
16 Decision, which is incorporated by reference herein.

17 **II. JUDGMENT**

18 1. Plaintiff, The Highlands of Cedar River Homeowners' Association, is a
19 homeowners association. Its members are owners of property located in Cheryl Lee
20 Heights, Division 3, according to the plat thereof recorded in Vol. 126 of Plats, pages 72
21 through 76 inclusive, under King County Recording No. 8403280328 ("Division 3") and
22 in Cheryl Lee Heights, Division 4, according to the plat thereof recorded in Vol. 128 of
23 Plats, pages 79 through 83 inclusive, under King County Recording No. 8410090673
24 ("Division 4").

25 2. The lots in Division 3 are subject to certain covenants, conditions and
26 restrictions recorded under King County King County Recording No. 8404180285, as
amended ("Division 3 Covenants").

1 3. The lots in Division 4 are subject to certain covenants, conditions and
2 restrictions recorded under King County King County Recording No. 8512130003, as
3 amended (“Division 4 Covenants”).

4 4. Paragraph 16 of the Division 3 Covenants, which states “no shrubs, trees
5 or bushes shall be planted and allowed to grow to a height which unduly restricts the
6 exposure or view from adjoining properties,” applies only to those trees and shrubs
7 planted by humans or “planted” as “volunteer” shrubs or trees after Division 3 was platted.
8 Had the developers used the disjunctive “or” in that phrase, it could have been interpreted
9 to apply to both planted trees and to preexisting trees, but they used the word “and,” which
10 must be given its plain and ordinary meaning. Thus, the phrase “planted and allowed to
11 grow” does not include existing, older growth trees which were left standing in Division 3
12 at the time the division was platted. Such trees are exempt from the height/view
13 restriction stated in Paragraph 16 and the owners of such trees are not required and cannot
14 be compelled to prune, trim or remove those trees.

15 5. The phrase “adjoining or facing properties,” used in Sections 14 and 16 of
16 the Division 3 Covenants carries its common and ordinary meaning and does not mean or
17 include properties that do not share a common boundary. The term “facing” applies to
18 lots that are oriented such that the front of one lot is directly opposite the front of another,
19 as for example, to lots that are across a street from one another. Thus, the view protection
20 provisions in Section 14 of the Division 3 Covenants apply only to lots that physically
21 share a common boundary line along the entire length of that line, and to lots that face one
22 another. The view protection provisions in Section 16 of the Division 3 Covenants apply
23 only to lots that physically share a common boundary line along the entire length of that
24 line. As used in the Division 3 covenants, the terms “adjoining” and “facing” do not mean

1 or apply to lots that physically touch one another only at a corner, such as lots located
2 diagonally from one another.

3 6. The Division 3 and 4 covenants do not cross apply. Only owners of
4 Division 3 lots and the Association on behalf of such owners have the authority to enforce
5 the Division 3 Covenants against Division 3 lots. Only owners of Division 4 lots and the
6 Association on behalf of such owners have the authority to enforce the Division 4
7 Covenants against Division 4 lots.

8 7. Owners of Division 3 lots are not subject to the Division 4 Covenants, and
9 the Division 4 Covenants cannot be enforced against owners of Division 3 lots for the
10 benefit of the Association or owners of Division 4 lots.

11 8. Owners of Division 4 lots are not subject to the Division 3 Covenants, and
12 the Division 3 Covenants cannot be enforced against owners of Division 4 lots for the
13 benefit of the Association or owners of Division 3 lots.

14 9. As the Division 3 and 4 Covenants do not cross-apply, Issue 5, above,
15 which concerns the question who bears the cost of trimming, pruning or removing view-
16 blocking trees, and related mitigation costs, is moot.

17 10. Defendants did not contest the authority of plaintiff, The Highlands of
18 Cedar River Homeowners Association, to administer and manage properties located in
19 both Divisions 3 and 4 pursuant and subject to the respective Covenants for each division,
20 and the Articles of Incorporation and Bylaws of the Association. The Association may
21 continue to act to carry out its purposes, including the collection of dues and
22 administration of architectural review requirement. In so doing, it must of course act
23 consistently with the lawful requirements imposed by the Articles, Bylaws and Covenants.

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DONE IN OPEN COURT this 13 ^{Sept} day of ~~May~~, 2007.

Deborah A. Fleck
JUDGE DEBORAH FLECK

Presented by:
MORGENSTERN LAW OFFICE

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Counsel for Kychakoff and Morvice

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CURRAN LAW FIRM

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