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Linda Daley
Laplata County Clerk

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DISTRICT COURT, LA PLATA COUNTY, COLORADO Court address: 1060 E. 2nd Ave., Durango, CO 81301 Phone Number : (970) 247-2304	<table border="1"> <tr> <td data-bbox="1058 516 1345 562"> IN COMBINED COURT LA PLATA COUNTY, COLORADO </td> </tr> <tr> <td data-bbox="1058 562 1345 723"> <p style="text-align: center;">JAN 20 2004</p> </td> </tr> <tr> <td data-bbox="1058 723 1345 769"> <p style="text-align: center;">DEPUTY CLERK</p> </td> </tr> <tr> <td data-bbox="1058 769 1345 998"> <p style="text-align: center;"><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p> </td> </tr> </table>	IN COMBINED COURT LA PLATA COUNTY, COLORADO	<p style="text-align: center;">JAN 20 2004</p>	<p style="text-align: center;">DEPUTY CLERK</p>	<p style="text-align: center;"><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
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<p style="text-align: center;"><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>					
Plaintiff(s): FOREST LAKES PROPERTY OWNERS, ASSOCIATION, INC., a Colorado non-profit corporation Defendant(s): MYRON E. TOLF and LOUSE C. TOLF Third-Party Defendants: CASEY COOK, CINDY SCHWARTZKOPF, ANNE SCHRIER, BILL MORLONG and ARRON JOHNSON, in their individual capacities.					
	Case Number: 03CV154 Division: 4				
ORDER REGARDING MOTION FOR SUMMARY JUDGMENT					

The case comes before the Court upon the Defendants' Motion for Summary Judgment. After listening to the arguments and reviewing the briefs of the parties, the Court finds as follows:

The parties agree that the Plaintiff, the Forest Lakes Property Owners, Association, Inc., (hereinafter "FLPOA") have brought this lawsuit against the Defendants, Myron and Louise Tolf, (hereinafter the "Tolfs"), based upon the 1998 covenants that FLPOA had recorded with the clerk and recorder on October 29, 1998. The Tolfs argue that the 1998 amended covenants are not effective because they were not properly adopted, and even if they were properly adopted, they were adopted too late to prevent the automatic renewal provision of the 1973 covenants to engage.

RD

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The Court shall enter summary judgment when the record shows that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708, 712 (Colo. 1987); C.R.C.P. 56(c). However, “all doubts concerning summary judgment should be resolved against the moving party.” *Dominguez v. Babcock*, 727 P.2d 362, 365 (Colo. 1986). Additionally, the moving party bears the initial responsibility to inform the court of its basis for summary judgment and to identify those portions of the record which demonstrate the absence of a genuine factual issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323; *Continental Airlines, Inc.*, 731 P.2d at 712.

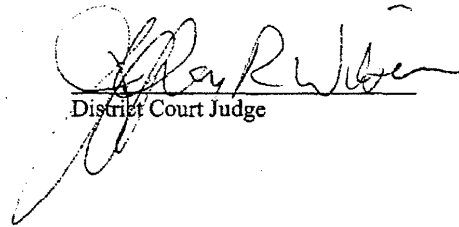
The material facts in this case are not in dispute. The 1973 covenants were filed with the La Plata County Clerk and Recorder of April 10, 1973. The covenants had a duration of 25 years and were to be automatically extended for successive periods of ten years from the anniversary of their being recorded “. . . unless an instrument signed by a majority of the owners of the lots has been recorded agreeing to change the covenants. . .” 1973 covenants, VIII, 1., p. 29. In 1998 FLPOA held a vote concerning amending the covenants. While the Tolfs have some questions about validity of this election, FLPOA records indicate that the majority of the voters approved the changes. The FLPOA caused the amended covenants to be filed with the clerk and recorder on October 29, 1998. There has never been a written instrument filed in with the La Plata County Clerk and Records Office signed by the lot owners agreeing to implement the 1998 amended covenants.

The Court agrees with the Tolf’s that because the covenants contain a specific procedure for their modification, that procedure must be strictly followed. See *Dunne v. Shenandoah*, 12 P3d 340, 343-344, (Colo. App. 2000). The Court cannot substitute the recording of a vote for the

requirement of the filing of an instrument that is signed by a majority of the lot owners. In addition, the failure of FLPOA to record the 1998 amended covenants prior to the anniversary date of automatic extension of the 1973 covenants voids any amendment even had it been properly adopted. See *Mauldin v. Panella*, 17 P.3d 837, (Colo App. 2000).

The Court therefore Orders that the 1998 covenants are void and cannot be enforced in this action. This Order does not preclude the FLPOA from enforcing any previous covenants that have not been abandoned and were properly adopted and recorded. The Court further Orders the attorneys for the parties to schedule with the Court a 15 minute status conference to discuss whether the FLPOA wishes to amend the complaint and the likelihood the parties will be ready for trial on February 10, 2004.

Done and signed this 21st day of JAN, 2004.


District Court Judge

XC: Rasure
Liberman

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