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SCANNED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 2 2015

BY 
JASMIN CABILLAS, DEPUTY

9 Attorney for Plaintiff, ARROWHEAD
10 WOODS ARCHITECTURAL COMMITTEE,
11 INC., a California corporation

12
13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN BERNARDINO CENTRAL DIVISION

15 ARROWHEAD WOODS)
16 ARCHITECTURAL COMMITTEE)
17 INC., a California corporation,)
18 Plaintiff,)
19 vs.)
20 GEORGE D. HATT, DONNA R. HATT,)
21 and all persons unknown claiming any)
22 legal or equitable right, title, estate, lien)
23 or interest in the property described in)
24 the complaint, named as DOES 1 to 50,)
25 inclusive)
26 Defendants.

Case No: CIVDS 1400240

**DECLARATION OF JOHN G.
WÜRM IN OPPOSITION TO
MOTION BIFURCATE TRIAL**

Date: April 21, 2015
Time: 8:30 A.m.
Dept: S-37

27 I, JOHN G. WÜRM, declare as follows:

28 1. I am the attorney of record for Plaintiff. I submit this *Declaration* in opposition to Defendants' motion to bifurcate the trial. I have personal knowledge of the facts declared to herein. If called to testify about the facts contained herein, I can and will truthfully do so.

2. The *Complaint* in this matter was filed on January 7, 2014. An *Answer* was filed by

1 Defendant on or about June 24, 2014. A motion to amend the complaint is set for May 4, 2015 to
2 allege an additional document recorded on July 8, 1965, a *Corporation Quitclaim Deed*, which
3 grants Plaintiff the authority to prevent Defendants from cutting down the trees on their property.
4 Plaintiff requests that the court take judicial notice of the Motion to Amend Complaint and
5 supporting documents. Defendants have requested a jury trial on all issues.

6 3. The authority granted to Plaintiff under the *Corporation Quitclaim Deed* does not
7 expire. If Defendants' motion were granted and even if they prevailed at the bifurcated portion of
8 the trial, the court would still be required to hear the issues of whether Defendants are prohibited
9 from cutting down the trees on their property under the *Corporation Quitclaim Deed* and Plaintiff's
10 damages for the unapproved tree cutting. Even if the proxies expired as Defendants contends, the
11 Defendants still have to obtain Plaintiff's approval to cut down the trees on their property under the
12 restrictions in the *Corporation Quitclaim Deed*. Plaintiff would also introduce evidence that it is
13 the successor to the Architectural Committee referenced in the *Corporation Quitclaim Deed* and has
14 functioned as such for over 25 years. Plaintiff would also introduce evidence of the damages it
15 suffered because Plaintiff is cutting down trees.

16 4. I discussed the motion with Defendants' attorney at my office. He stated that he
17 didn't want a separate hearing date for the bifurcated portion of the trial. If the motion is granted,
18 the bifurcated portion of the trial would proceed on June 29, 2015. Presumably, Defendants would
19 put on their evidence first to attempt to establish that Plaintiff no longer exists. If the Defendants
20 satisfied their burden of proof, then Plaintiff would introduce evidence to prove its existence.
21 Defendants have requested a jury trial. Plaintiff is entitled to have the jury hear the evidence of its
22 existence. The parties would still have to prepare for the entire trial.

23 5. Defendants' motion is based on their contention that the Plaintiff "no longer exists".
24 The evidence Plaintiff would introduce to prove its existence would include much of the same
25 evidence that Plaintiff would introduce to prove the allegations of the Complaint or the First
26 Amended Complaint. Plaintiff would call an estimated eight witnesses from among its board of
27 directors to testify to the functioning of Plaintiff in approving new construction, remodeling,
28 maintenance of property, installation of fencing and boundary line barriers, trimming of tree

1 branches and limbs, maintaining the health of the forest and preventing persons such as Defendants
2 from cutting down the trees on their property. Additionally, Plaintiff expects to call multiple
3 witnesses outside Plaintiff's board of directors to testify about Plaintiff's functions in approving
4 new construction, remodeling, maintenance of property, installation of fencing, cutting down and
5 trimming of trees, and maintaining the health of the forest. These witnesses and the evidence would
6 be introduced at both portions of the trial.

7 6. Defendants contend that Plaintiff "no longer exists". Defendants have requested a
8 jury trial. Plaintiff is entitled to have the jury hear the evidence of its existence in the bifurcated
9 portion of the trial. In order to prove its existence, Plaintiff would introduce much of the same
10 evidence that would be heard as would be heard in the second phase of the trial.

11 7. The other basis for Defendants' motion is their desire to prove that they own the
12 property on which they have been cutting trees. This is simply an effort bolster a weak motion by
13 injecting a non-issue. As Defendants' motion states, both the *Complaint* and the *First Amended*
14 *Complaint* allege that the Defendants own the property on which they are cutting trees. If
15 Defendants did not own the property, then Plaintiff would not have claim against them under the
16 *Declaration of Restrictions*.

17 8. Defendants motion does not contest that they have cut down trees on their property.
18 Defendants motion does not seek to bifurcate liability or compensatory damages. The only issue is
19 how much in damages they owe for cutting down trees without obtaining approval as required under
20 the *Declaration of Restrictions* and *Corporation Quitclaim Deed*. Since Defendants are requesting
21 a jury trial, the jury would have to be empanelled to hear the bifurcated issues first, deliberate and
22 then, even if the proxies are not valid, the rest of the trial on the damages owed under the
23 *Corporation Quitclaim Deed*. In my experience and from my knowledge of the evidence and
24 issues, there will be no savings to the court or the parties. This is just an attempt by the Defendants
25 to delay and confuse the issues because they know they have violated the prohibitions of cutting
26 down the trees on their property found in the *Corporation Quitclaim Deed*

