



Granted

The moving party is to provide a copy of these parties who have an appearance in this action within 5 days from the date of this order.

DISTRICT COURT, ARCHULETA COUNTY,
COLORADO

Court Address: 449 San Juan Boulevard
Pagosa Springs, CO 81147

**PLAINTIFF: COLORADO'S TIMBER RIDGE
HOMEOWNERS ASSOCIATION, a Colorado non-
profit corporation**

**DEFENDANTS: COLORADO TIMBER RIDGE
RANCH, L.P., a California limited partnership;
GEORGE TAULMAN and JEAN TAULMAN, a
married couple; and WALTER JOSEPH
MACHOCK**

Gregory G. Lyman
District Court Judge
Date of Order attached

▲ COURT USE ONLY ▲

Case Number: 09 CV 95

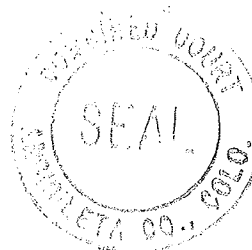
Div.: Ctrm.:

**ORDER AND ENTRY OF JUDGMENT IN FAVOR OF PLAINTIFF CTRHOA
AND AGAINST DEFENDANTS GEORGE AND JEAN TAULMAN**

THIS MATTER came before the Court on the parties' Stipulated and Joint Motion for Entry Of Judgment As Between Plaintiff Colorado Timber's Ridge Homeowners Association ("HOA") and defendants George and Jean Taulman ("Motion").

The Court, having read the Motion and fully considered all of the stipulations between the parties stated therein, and being otherwise fully advised in the premises, HEREBY MAKES THE FOLLOWING FACTUAL FINDINGS:

1. Plaintiff HOA is a Colorado non-profit corporation with its principal place of business being in Pagosa Springs, Colorado.
2. Defendant Colorado Timber Ridge Ranch, L.P (the "Declarant" or "CTRR") is a California limited partnership with its principal place of business being in Bountiful, Utah.
3. Defendant Walter Joseph Machock ("Machock") is the general partner of the Declarant.
4. Defendants George Taulman and Jean Taulman (collectively referred to as the "Taulmans") are residents of Taos, New Mexico.



**CERTIFIED to be a full,
true and correct copy of
original in my custody
Dated February 3, 2011
Gloria Adams
Clerk of the Combined Courts
ARCHULETA COUNTY**

5. This Court has subject matter jurisdiction over this action pursuant to Section 9, Article VI of the Constitution of the State of Colorado.
6. All named defendants are subject to personal jurisdiction of this Court, pursuant to C.R.S. §13-1-124, because the defendants either own real property or are general partners of a defendant that owns real property situated in Archuleta County, Colorado that is the subject of this action.
7. Venue is proper in this forum pursuant to C.R.C.P. Rule 98 (a).
8. Prior to July 29, 1999, the Declarant purchased real property located in Archuleta County, Colorado commonly known as the Gomez Ranch and more particularly described as follows:

A tract of land located in the Southeast Quarter (SE4) of Section 21; the West Half of the Southwest Quarter (W2SW4) of Section 22; the Southwest Quarter of the Northeast Quarter (SW4NE4) and the Northwest Quarter (NW4) and the North Half of the Southwest Quarter (N2SW4) and the Southwest Quarter of the Southwest Quarter (SW4SW4) and the Northwest Quarter of the Southeast Quarter (NW4SE4) of Section 27; the East Half (E2) and the Northwest Quarter (NW4), less tracts sold, and the North Half of the Southwest Quarter (N2SW4) and the Southeast Quarter of the Southwest Quarter (SE4SW4) of Section 28, Township 35 North, Range 2 West, New Mexico Principal Meridian, Archuleta County, Colorado totaling 1178 acres, more or less.

The above-described real property is hereinafter referred to as the "Property".
9. On July 29, 1999, the Declarant executed a document entitled Declaration of Protective Covenants, Conditions and Restrictions for Colorado's Timber Ridge Subdivision" (hereinafter referred to as the "Declaration").
10. The Declaration was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on August 26, 1999 at reception number 99008651.
11. The Property is described in Exhibit A to the Declaration.
12. The Declarant created the Declaration as part of its development of a single-family residential community with parks, recreational facilities and other amenities for the benefit of the community that the Declarant named "Colorado's Timber Ridge Ranch."

13. The Declaration was created, in part, to insure the attractiveness of individual property and the community facilities within the Property, to prevent future impairment to the Property, and to preserve, protect and enhance the value and amenities of the Property.
14. One of the recreational amenities identified in the Declaration for the use and enjoyment of members of the HOA is an Equestrian Center.
15. The Property and the Declaration are subject to the Colorado Common Interest Ownership Act, found at C.R.S. § 38-33.3-101, et seq.
16. The Declarant created and formed HOA to administer the Declaration.
17. The Declarant twice amended the Declaration by filing the "First Supplemental Declaration to Declaration of Protective, Conditions and Restrictions for Colorado's Timber Ridge Subdivision," which was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on December 5, 2000 at Reception No. 20011530, and the "Second Supplemental Declaration to Declaration of Protective, Conditions and Restrictions for Colorado's Timber Ridge Subdivision," which was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on December 19, 2002 at Reception No. 20212642 (hereinafter collectively referred to as the "Amendments").
18. The Declaration and the Amendments fail to specify a time limit within which the Declarant must exercise its development rights.
19. The Declaration states that the Declarant reserves the right to create 76 lots in Phase One of Colorado's Timber Ridge.
20. The later Amendments state that the Declarant reserves the right to create 50 lots in Phase Two, 33 lots in Phase Three, and 44 lots in Phase Four of Colorado's Timber Ridge.
21. Prior to January 2003, a total of 203 lots were created in Colorado's Timber Ridge by Declarant and approved by the Board of County Commissioners for Archuleta County.
22. The Declaration and the Amendments fail to set forth the maximum number of units the Declarant reserves the right to create.
23. On or about May 21, 2008, and without the knowledge or approval of HOA, Declarant unilaterally developed a previously undeveloped portion of the Property, approximately 319.44 acres in size, hereinafter referred to as the "Undeveloped Property", by recording Plat number 882 entitled "Timber Meadows" in the office of the Clerk and Recorder for Archuleta County, Colorado at reception number 20803811, hereinafter referred to as the "Timber Meadows Plat".

24. The Timber Meadows Plat depicts and describes a total of nine differing parcels out of the Undeveloped Property, each of which are 35+ acres in size, and one of which is bisected by Bristlecone Drive and identified as "Equestrian Center", referred to hereinafter as "Equestrian Center Tract."
25. Defendants George and Jean Taulman purchased the Equestrian Center Tract and Parcel 8 described in the Timber Meadows Plat from the Declarant pursuant to the terms stated in the unsigned Purchase Agreement between the Taulmans and Declarant, with the following exceptions: (1) the Taulmans paid \$153,535.58 to Bank of Colorado to pay-off a loan Declarant had with Bank of Colorado and \$46,464.42 to defendant Walter Joseph Machock, individually; and, (2) the numbered parcel conveyed by the deed in lieu referenced in the Purchase Agreement described Parcel 8 of the Timber Meadows Plat rather than Parcel 7.
26. On June 24, 2008, without the knowledge or approval of HOA, Declarant executed a Deed-in-Lieu of Foreclosure purporting to legally transfer title to the Equestrian Center Tract to the Taulmans, hereinafter referred to as the "Equestrian Center Deed-in-Lieu". The Equestrian Center Deed-in-Lieu was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on June 30, 2008 at reception number 20804983.
27. On June 27, 2008, without the knowledge or approval of HOA, Declarant executed a Deed-in-Lieu of Foreclosure purporting to validly transfer title to real property described as Parcel 8 on the Timber Meadows Plat to the Taulmans ("Parcel 8 Deed-in-Lieu"). The Parcel 8 Deed-in-Lieu was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on June 30, 2008 at reception number 20804984.
28. On June 30, 2008, without the knowledge or approval of HOA, Declarant recorded Plat number 885 entitled "Timber Meadows Amended Plat" in the office of the Clerk and Recorder for Archuleta County, Colorado at reception number 20804982.
29. The Timber Meadows Amended Plat purports to remove from Timber Meadows the real property and improvements purportedly transferred to the Taulmans by the Equestrian Center Deed-in-Lieu and Parcel 8 Deed-in-Lieu.
30. On March 28, 2009, without the knowledge or approval of the HOA, Declarant executed a (Corrective) Deed-in-Lieu of Foreclosure purporting to correct the previously recorded Parcel 8 Deed-in-Lieu ("Corrective Deed"). This Corrective Deed was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on June 1, 2009 at reception number 20903891.

BASED UPON THE ABOVE ENUMERATED UNDISPUTED MATERIAL FACTS, **JUDGMENT IS HEREBY ENTERED IN FAVOR OF PLAINTIFF HOA AND AGAINST DEFENDANTS GEORGE AND JEAN TAULMAN AS FOLLOWS:**

- A. The Undeveloped Property and the Declaration and Amendments, all as described herein above, are declared to be subject to the Colorado Common Interest Ownership Act, found at C.R.S. § 38-33.3-101, et seq.
- B. The Undeveloped Property, as described herein above, is declared to be subject to and encumbered by the Declaration and Amendments.
- C. Defendant Colorado Timber Ridge Ranch, L.P.'s (Declarant's) development of the Undeveloped Property by the creation of units designated for separate ownership or occupancy (Parcels 1- 8 and the Equestrian Center Tract) as shown on Plat number 882 entitled "Timber Meadows" and recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on May 21, 2008, 2008 at reception number 20803811 **is hereby declared void *ab initio* as a matter of law;**
- D. Plat number 885 entitled "Timber Meadows Amended Plat" and recorded on June 30, 2008 in the office of the Clerk and Recorder for Archuleta County, Colorado at reception number 20804982 **is hereby declared void *ab initio* as a matter of law;**
- E. The transfers of property by Declarant to the Taulmans by way of the herein described Equestrian Center Deed-in-Lieu, the Parcel 8 Deed-in-Lieu, the Corrective Deed, and any and all subsequent deeds or corrective deeds or transfers relating to the Undeveloped Property **are hereby declared invalid in all respects and *void ab initio*;**
- F. Plaintiff HOA shall cause a certified copy of this order to be recorded in the Office of the Clerk and Recorder for Archuleta County, and by such recording, all persons and the public are provided notice of this order;
- G. Plaintiff HOA shall cause a certified copy of this order to be filed and affixed to the herein described Timber Meadows Plat and Timber Meadows Amended Plat filed in the real property (plat) records for Archuleta County, and by such recording and filing the above referenced Timber Meadows Plat and the Amended Timber Meadows Plat shall be stricken from the real property records of Archuleta County; and,
- H. Plaintiff HOA is hereby declared to be the prevailing party in this action and entitled to the recovery of all costs, fees, and expenses incurred in this action, including reasonable attorney's fees, expert witness fees and costs and deposition expenses as provided by Colorado law (C.R.S. § 38-33.3-123 and the Covenants).

THE ABOVE JUDGMENT IS A FINAL JUDGMENT OF THIS COURT. BASED UPON SAID JUDGMENT, IT IS HEREBY FURTHER ORDERED THAT:

1. Determination of the appropriate amount of costs, fees, and expenses incurred in this action by Plaintiff HOA as prevailing party, including reasonable attorney's fees, expert witness fees and costs and deposition expenses as provided by law (specifically pursuant to C.R.S. § 38-33.3-123 and the Covenants), the apportionment of such costs, fees and expenses, and the award of any pre-judgment and post-judgment interest relating to such costs, fees and expenses, is reserved for determination by the Court in accordance with C.R.C.P. Rule 121 § 1-22. Unless an agreement with respect to such costs, fees and expenses is agreed to between the parties, the Court shall hold a hearing on the issue and will allow the HOA and the Taulmans to present witness testimony and documentary evidence in support of their respective positions; however, except for any witness necessary to lay a foundation for the admission of documents, demonstrative exhibits, or other evidence, and any witness necessary to rebut or impeach any witness endorsed by any other party, the Taulmans are limited to George Taulman as their single witness for direct-examination for their case-in-chief and the following described documentary evidence:
 - A. Plat number 882 entitled "Timber Meadows", dated February 29, 2008 and filed for record in the Office of the Clerk and Recorder for Archuleta County, Colorado on May 21, 2008 at Reception No. 20803811.
 - B. Plat number 885 entitled "Timber Meadows Amended Plat" dated June 27, 2008 and filed for record in the Office of the Clerk and Recorder for Archuleta County, Colorado on June 30, 2008 at 9:54 a.m., Reception No. 20804982.
 - C. Assignment Agreement entered into effective May 29, 2008 between Bank of Colorado and George and Jean Taulman, executed by Taulmans on June 10, 2008.
 - D. Promissory Note dated July 17, 2006 listing Bank of Colorado as Lender and CTRR as Borrower.
 - E. Assignment of Deed and Trust and Assignment of Rents and Leases dated effective May 29, 2008, executed by Taulmans on June 10, 2008.
 - F. Real Estate Re-Purchase and Indemnification Agreement dated June 24, 2008 executed by the Taulmans and CTRR LP (Walter Joseph Machock as General Partner.

- G. Purchase Agreement between Colorado Timber Ridge Ranch and George and Jean Taulman (unsigned and 6 pages) as produced by Taulmans.
- H. Peoples Bank Record dated June 30, 2008 for Gina Lynn Taulman minor by Jean Taulman or George Taulman as produced by Taulmans.
- I. Great Divide Title Letter dated November 21, 2006 and enclosed Policy of Title Insurance (7 pages) as produced by Taulmans.
- J. Check No. 124236 from George Taulman to Joe Machock in the amount of \$46,464.42 dated 6-24-2008.

2. Based upon the Court's January 10, 2011 Order entering default judgment against defendants Colorado Timber Ridge Ranch, L.P. and Walter Joseph Machock, this order and all orders entered by the Court since January 17, 2011, the February 7 – 9, 2011 trial dates are unnecessary and trial IS HEREBY VACATED.

3. Entry of this judgment is not contingent upon entry of any order regarding the Taulmans' motion seeking preservation of their claims against Colorado Timber Ridge Ranch, L.P. and Walter Joseph Machock.

DONE AND SIGNED this _____ day of _____, 2011.

BY THE COURT

District Court Judge

APPROVED BY:

SHAND, NEWBOLD & CHAPMAN, PC.
*Original signature on file at the offices of
Shand, Newbold & Chapman, P.C.*

By: /s/ R. Thomas Geyer
A. Michael Chapman
R. Thomas Geyer
Attorneys for Plaintiff HOA

And

J.A. BOPP, LLC
*Original signature on file at the office of
J.A. Bopp, LLC*

By: /s/ Jesse A. Bopp
Jesse A. Bopp
Attorney for Defendants, George and Jean Taulman

Data:WP:8006:01:Pleadings:Proposed Order Taulman Judgment .docx

This document constitutes a ruling of the court and should be treated as such.

Court: CO Archuleta County District Court 6th JD

Judge: Gregory G Lyman

File & Serve

Transaction ID: 35433852

Current Date: Jan 25, 2011

Case Number: 2009CV95

Case Name: COLORADOS TIMBER RIDGE HOMEOWNERS ASSOCI vs. COLORADO TIMBER
RIDGE RANCH LP et al

Court Authorizer: Gregory G Lyman

/s/ Judge Gregory G Lyman