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MARY JEAN CAHAIL
SAN JUAN COUNTY ASHINGTON

SUPERIOR COURT OF WASHINGTON FOR SAN JUAN COUNTY

Bradley F Henke and Judith M Henke, Plaintiffs, vs Oly Rose, LLC and Rockresorts International, LLC Defendants	NO 02 2 05188 1 COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF

For Complaint, plaintiffs allege

1 Plaintiffs are the owners of lots 4 and 17 of the Plat of Rosario Estates, according to the plat recorded in Volume 2 of Plats, pages 3 and 3A, in San Juan county, Washington, and plaintiff Judith M Henke is the owner of lot 52 of said plat

Said lots are contiguous, with a house on lot 17 shown on the plat, and are located across the driveway from the "recreation" area labelled as such on the plat Plaintiffs have a view of the recreation area, as well as the waters beyond it, from their house, which was and remains one of the principal attributes of value of their property

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3cb

ORIGINAL

2 The plat contains the following language in the upper right hand corner

"DEDICATION

"Falcon Corporation, a corporation organized and existing under the laws of the State of Texas, owner in fee simple of the land hereon platted, does hereby, through its officers, declare this Plat of "Rosario Estates" and dedicates to the use of the lot owners all side roads, alleys and driveways shown, together with the free access to and use of the recreation area "

3 Plaintiffs purchased their lots in 1968 from Gilbert H Geiser and his wife, successors in interest to Falcon Corporation, the original platter of Rosario Estates

4 Falcon Corporation and Geiser operated, and their successors in interest to the defendants have since then operated, a hotel at "the big house," labelled as such on the plat

5 The "recreation area," labelled as such on the plat, was when plaintiffs purchased their lots and except as related hereafter remains in common use by the guests of the hotel, the users of the marina and the purchasers of lots and their successors in interest within Rosario Estates

6 When plaintiffs purchased their property, and for more than thirty years thereafter, a swimming pool, bathhouse and patio surrounded by a low fence were present in the recreation area and maintained by the owners and operators of the hotel and associated property within Rosario Estates This pool facility was principally used by the guests of the hotel and users of the marina but was also used, without charge or conditions, by the purchasers of lots and their

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successors Free access to the pool facility, along with the rest of the recreation area shown on the plat, was an inducement to the purchase of their lots by plaintiffs and other lot owners within Rosario Estates

7 Defendant Oly Rose, LLC, a Delaware Limited Liability Company, is the current owner of the hotel, marina and common areas of Rosario Estates, as well as some of the lots, and a successor to Falcon Corporation and Geiser

8 Defendant Rockresorts, International, LLC, a Delaware Limited Liability Company, manages the hotel, marina and common areas of said plat on behalf of Oly Rose and may claim some interest in the common areas of said plat, including the recreation area

9 Approximately two years ago, defendants removed the low fence originally part of the pool facility and erected a larger, crude and unsightly, fence around it and a much larger part of the recreation area, about one third of an acre This fence obstructs a part of the view of the recreation area and waters behind it from plaintiffs' property

10 Since then, defendants have excluded plaintiffs and other owners of lots within the plat of access to and use of the area they fenced, including the swimming pool facility, unless an "initiation fee" of $100 00 and an annual fee of $250 00, demanded of them by the defendants, is paid to the defendants Plaintiffs have declined to pay these fees and have been excluded from use of the fenced area by defendants

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11 Defendants have also, during the past two years erected temporary structures within the recreation area, including a plastic tent approximately 30 feet wide by 30 feet long which remained in place most of the summer and part of the fall of 2002, further depriving plaintiffs and other owners of lots within the plat of free access to and use of the recreation area, and further interfering with plaintiffs' view across the recreation area from their property

12 As a result of defendants' conduct described above, plaintiffs and other owners of lots within Rosario Estates have been damaged by the loss of use of the area they have fenced and areas enclosed by temporary structures, particularly the loss of use of the swimming facility, and the value of their property has been diminished and will be permanently diminished unless defendants are enjoined as requested herein

Wherefor, plaintiffs request the Court enter judgment as follows

13 Declaring plaintiffs and all other owners of lots within the Plat of Rosario Estates, according to the plat recorded in Volume 2 of Plats, page 3 and 3A, of the records of San Juan County, to have the right of access to and the use of the recreation area, including the swimming pool therein, without fees or other restrictions imposed by the defendants,

14 Enjoining defendants, to remove the present fence around the swimming facility and large part of the surrounding

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recreation area, to restore the fenced area to its prior dimensions, condition and appearance, or, in the alternative, authorizing plaintiffs to do so and requiring defendants to reimburse plaintiffs for the reasonable expenses which may be incurred in the process,

15 Enjoining defendants from maintaining the tent mentioned above or other temporary structures within the recreation area except with the permission of the owners of every lot within the plat of Rosario Estates,

16 Enjoining defendants from demanding payment of any fee of plaintiffs or other owners of lots within the plat of Rosario Estates for the use of the recreation area, including the swimming pool and any other facility therein,

17 Awarding plaintiffs damages for their being deprived of the use of the use of the swimming facility and a large part of the recreation area for the past two years, and for damage to their view across the recreation area,

18 Awarding plaintiffs such other relief as may to the Court appear just,

19 Awarding plaintiffs their attorneys' fees and costs

Dated this 21st day of November, 2002

HENKE AND RICHTER

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