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**STATE OF NEW MEXICO**  
EIGHTH JUDICIAL DISTRICT COURT

CHAMBERS OF  
**JEFF FOSTER McELROY**  
CHIEF DISTRICT COURT JUDGE  
DIVISION III

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RE: Rhines, et al. v. Reynolds, et al., D-820-CV-2015-00328

Dear Counselors:

Please find attached my ruling in the Defendants' Motions for Summary Judgment and the Plaintiffs' Motion to Strike Portions of the Defendants' Motion for Summary Judgment.

In previous rulings in this case, I have stricken the Plaintiffs Count II. I dismissed the Defendants Counter Claim. I denied the Plaintiffs' request for a preliminary injunction. And now, I have granted summary judgment as to Plaintiffs' Counts III and IV and much of Count I, including punitive damages.

I have spent a good deal of time with the facts and the law of this case. I feel compelled to write this cover letter to explain some thoughts and conclusions I have come to that I was not able to include in my order on the pending motions.

What is left in dispute in this case revolves around two basic issues: 1) whether the current HOA board has been duly constituted and has the proper authority to act on behalf of the homeowners; and 2) whether the common lands and the roads have been properly turned over to ownership and control of the homeowners association. These are issues of good management that all parties involved in this law suit and those who are homeowners in the development should all have an interest in resolving. Using the Court and a trial seems the least efficient way to resolve such matters.

Clearly the Plaintiffs are upset with the Defendants, particularly, Michael Reynolds, initiator of the subdivision. The passage of time, Mr. Reynolds' side projects, the uniqueness of the vision and economics have all contributed to the very long time it has taken for this development to get completed. In the twenty-five years this project has been pending, New Mexico law has evolved with respect to subdivisions and, particularly, with Homeowner Associations.

The New Mexico Homeowner Associations Act (Section 47-16-1, et seq NMSA 1978) took effect July 1, 2013. The act specifically determines the number of board members that must be elected as lots are sold and impacts the declarant's right of control (see Section 47-16-8 NMSA 1978). Section 47-16-15 specifically applies Section 47-16-8 to articles of associations created prior to July 1, 2013 and invalidates provisions contrary to the new law.

As to the first issue, a committee of respected members of the association needs to review the existing records, obtain independent legal advice and put the association's affairs to rights.

On the second issue, the long passage of time demands that the issue of title to the roads and common lands be resolved. The rationale for not surveying or deeding the common lands and roads until all units sold made sense in the short term. It is untenable given the twenty years, and now more, it has taken to complete all of the phases of this project. Responsible members of the association and Mr. Reynolds need to figure out a resolution for this problem.

The Court is willing to take this case to trial, and other than its written orders has not prejudged the facts of this case or how the matters still in dispute should be decided. However, in the interest of a satisfactory and economical resolution of this dispute, the Court remains available to assist the parties enter into settlement discussions to resolve, or at least come up with a structure to resolve, these long standing issues that involve not just the litigants to the suit, but all those involved in this development.

Sincerely,



Jeff McElroy  
District Court Judge