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IN THE FIFTH JUDICIAL DISTRICT COURT FOR WASHINGTON COUNTY

STATE OF UTAH

EVELYN OBERG, an individual,

Plaintiff,

v.

DIXIE SPRINGS ARCHITECTURAL
CONTROL COMMITTEE, an entity
organized under the laws of the state of Utah,

Defendant.

**OPPOSITION TO MOTION FOR
PROTECTIVE ORDER AND
STATEMENT OF DISCOVERY ISSUES**

Civil No. 230500079

Judge G. Michael Westfall

DIXIE SPRINGS ARCHITECTURAL
CONTROL COMMITTEE, a domestic non-
profit Utah corporation,

Counterclaimant,

v.

EVELYN OBERG, an individual,

Counterclaim Defendant.

Defendant/Counterclaimant Dixie Springs Architectural Control Committee (the "ACC"),
by and through its counsel of record, hereby submits its Opposition ("Opposition") to Plaintiff's

Motion for Protective Order and Statement of Discovery Issues (the “Motion”). This Opposition is submitted pursuant to URCP 37(a)(3).

A. Relief Requested and Grounds Therefor.

The ACC requests that the Motion be denied and that the documents be made available for review and not just kept for “attorney’s eyes only.”

Plaintiff alleges to have amended the CC&Rs following the process set forth in Article VI Section 2, which states “this Declaration may be amended...by an *instrument signed by not less than sixty percent (60%) of the Lot Owners*, which amendment shall be effective upon *recordation in the Office of the Recorder of Washington County.*” Doc. #13 (emphasis added). In no uncertain terms, the CC&Rs require the amending instrument be signed by the Lot Owners and recorded as a public record. Despite this plain command, Plaintiff recorded the Fifth Amendment without such signatures and now seeks to keep the alleged voting records confidential. Such actions are against the plain language and intent of the CC&Rs. As such, the Motion should be denied.

Plaintiff asserts that this case is not about the “authenticity of lot owner signatures.” However, as set forth in the extensive briefing on the Application for Preliminary Injunction, this matter revolves around the entire voting process, including the authenticity of votes. *See Doc. # 12, 19, 31.* Plaintiff alleges that, over the course of 2 years, votes were obtained via door-to-door canvassing, mailings, and an online forum. Given the extended period of time, the entire process being controlled by persons motivated to pass the amendment, and multiple opportunities for

inappropriate votes¹, one of the primary concerns in this matter is transparency. When the ACC asked to review documents (including voting records) supporting the validity of the Fifth Amendment, Plaintiff filed suit and did not disclose the voting records without the ACC's counsel temporarily agreeing to keep them as "attorney's eyes only." Such actions do not inspire confidence in the voting process or the authenticity of the votes.

Plaintiff asserts that the votes should be kept anonymous to protect the integrity of the CC&R amendment process, prevent retaliation/intimidation, and prevent vote-buying or coercion. Given the plentiful issues with verification of votes, transparency is the only way to protect the integrity of the amendment process. The voting records need to be disclosed to permit Lot Owners the ability to confirm or deny whether they voted and how they voted.

Concerning retaliation/intimidation, persons in favor of the Fifth Amendment have intimidated the ACC and certain Lot Owners who disagree with the Fifth Amendment for years. *See Doc # 33-36, 40.* Despite this, the ACC has continued to operate pursuant to its function and authority per the CC&Rs. Concerns of vote-buying or coercion are moot because the votes have already been submitted. If Plaintiff is concerned that disclosure in this matter will set a precedent of votes becoming public, the response is twofold. First, the CC&Rs require that voting on an amendment be public. Second, there are multiple ways to address the issue of privacy to vote while maintaining transparency.²

¹ For example, renters may have voted, persons who moved out of the ACC could have had their votes counted, persons could have voted using different IP addresses and aliases, multiple owners of the same Lot could have voted and been counted twice, etc. The verification of votes is a massive issue and should not just be swept under the rug. Doc # 31.

² For example, in 2020, the ACC hired a third party to verify identities at the voting location and to count votes meanwhile a constable was hired to maintain order outside the facility. Doc # 33. Another example is to organize an online vote with proper verification systems in place.

B. Proportionality Weighs in Favor of Disclosure.

Plaintiff asserts that keeping the voting records confidential outweighs the benefit of releasing the records and that the records are “susceptible to misinterpretation.” As set forth above, transparency is required by the CC&Rs and is pivotal to the amendment process. Thus, the benefit of disclosure far outweighs the harm. It is unclear what Plaintiff means that the records are “susceptible to misinterpretation.” Either enough Lot Owners voted in favor of the Fifth Amendment, or they did not. Finally, Plaintiff asserts that, if the documents are disclosed, potential harm may come from third parties. This assertion is purely speculative. Additionally, if any harm does occur, there are likely to be recourses for such actions. However, the ACC and Lot Owners will be harmed without transparency in the amendment process.

Rule 26(b)(3) states that discovery is proportional based on several factors, including the parties’ resources. If the voting records are kept confidential, the ACC will incur excessive fees and costs to inefficiently verify the votes via its counsel. The ACC does not collect assessments and its only monetary sources are review fees, fines, and donations. It simply does not have the resources to pay counsel to verify this magnitude of votes. Plaintiff and her group are aware of this and have already attempted to incur excessive fees and costs. *See* Doc # 14. Disclosing the voting records will permit transparency in the amendment process and allow more efficient means of verifying votes (i.e., Lot Owners being able to raise concerns, if any, over their alleged vote). Additionally, the voting records are of vital importance in resolving the central issues in this matter and cannot be obtained or verified from another source.

For the reasons set forth herein, the ACC requests that the Motion be denied.

DATED: March 24, 2023.

SNOW JENSEN & REECE, P.C.

By: /s/ J. Tyler King
Jeffrey R. Miles
J. Tyler King
Attorneys for Counterclaimant

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023, I caused a true and correct copy of the foregoing

OPPOSITION TO MOTION FOR PROTECTIVE ORDER AND STATEMENT OF

DISCOVERY ISSUES to be served upon the following by the method indicated:

Zackary P. Takos	<input checked="" type="checkbox"/>	Electronic Filing
Steven R. Hart	<input type="checkbox"/>	Email
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