

2007

Lebr Associates, L.L.C., a Utah limited liability
company and Centennial Pointe Property Owners
Association (formed November 29, 2004) v.
Myriam Onyeabor : Reply Brief

Utah Court of Appeals

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LEBR ASSOCIATES, L.L.C., a	:	APPELLANT ONYEABOR’S
Utah Limited Liability Company and	:	REPLY BRIEF
CENTENNIAL POINTE PROPERTY	:	
OWNERS ASSOCIATION (formed	:	
November 29, 2004),	:	
Plaintiffs-Appellees,	:	Case No. 20070851-CA
 Vs.	:	
 MYRIAM ONYEABOR,	:	
Defendant - Appellant	:	

FILED
UTAH APPELLATE COURTS

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Any person who carries on, conducts, or transacts business under an assumed name without having complied with the provisions of this chapter, and until the provisions of this chapter are complied with:	

(1) shall not sue, prosecute, or maintain any action, suit, counterclaim, cross complaint, or proceeding in any of the courts of this state; and

(2) may be subject to a penalty in the form of a late filing fee determined by the division director in an amount not to exceed three times the fees charged under Section 42-2-7 and established under Section 63J-1-303.

Utah Code 76-6-401§ (4) "Obtain or exercise unauthorized control" means, but is not necessarily limited to, conduct heretofore defined or known as common-law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.....16, 29

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Rule 807 U.R.E.8

Authoritative Definitions

“Association I” means the Centennial Pointe Property Owners’ Association registered on April 21, 2000, dissolved September 27 2001, and never reinstated thereafter.

“Unregistered Association” means the Plaintiff Centennial Pointe Property Owners’ Association that initiated the litigation without registering with the State and continued as Plaintiff until replaced September 15, 2005 by the Appellees.

“Association II” means the Centennial Pointe Property Owners’ Association registered and incorporated on November 29th 2004, joining the litigation on September 15, 2005.

“CC&R” refers to CC&R recorded April 19th 2000, prior to Ms. Onyeabor's purchase of Lot # 1.

“Restated CC&R” refers to the CC&R recorded August 24th 2000, prior to Ms. Onyeabor's purchase of Lot # 2. Ms. Onyeabor was the Declarant as to Lot # 1.

ARGUMENT

I. MS ONYEABOR'S OPENING BRIEF SHOULD NOT BE STRICKEN

INTRODUCTION: Appellees argue Ms Onyeabor's Brief should be stricken. Each concern, to the degree applicable, has been satisfied. Issues raised and identified, remain subject to their Reply.

1. Each of the Issues Raised Address Jurisdiction and Can Be Raised At Any Time

"[S]ubject matter jurisdiction cannot be conferred upon a court by consent or waiver, and a judgment can be attacked for lack of subject matter jurisdiction at any time."¹ "And is void."²

Each of Ms Onyeabor's stated issues can be categorized as coming within a claim the trial court lacked subject matter jurisdiction over Appellees' claims. Standards of review followed the statement of the issues (See Table 2). The standing of Appellees (Issues ## 5-9, 14) was analyzed pages 51-52, and standard of review on page 50. Striking admissible evidence (Issue ## 1-3, 10,), failing to recognize disputed evidence (Issue # 11-13, 15-16;), and dismissing her counterclaim for quiet title and declaratory relief without notice "unconstitutionally denied [Onyeabor] the opportunity to have [her] day in court," constituting "a denial of due process" under Article I, section 7 of Utah Constitution. As an unconstitutional order is void, the trial court was without jurisdiction to enter the same. Without title, Ms Onyeabor has no contract right; absent a contract right, she has no contract obligation.³ Quiet title and declaratory claims, dismissed without notice, were not only void as noted above, but are inseparably intertwined with the pending claims in the trial court, making Rule 54(b)⁴ Utah R. Civ. P. certification improper. As Ms Onyeabor's counterclaims proceed, her quiet title claim provides necessary foundation to same.

2. Substitution of Appellees Was Insufficient to Confer Original Jurisdiction: (Appellant

¹ Van Der Stappen v. Van Der Stappen, 815 P.2d 1335, 1337 (UT App. 1991)..

² Garcia v. Garcia, 712 P.2d 288, 291 (Utah 1986)

³ Nelson v. Jacobsen, 669 P.2d 1207, 1212 (Utah 1983) ("Where notice is inadequate to inform a party of the nature of the proceedings or not given sufficiently in advance of the proceeding to permit preparation, a party is deprived of due process.")

⁴ Backstrom Family P'ship v. Hall, 751 P.2d 1157, 1160 (Utah Ct. App. 1988) ("The order lacks the qualities of being "final" as to the issues and parties .Rule 54(b) certification is not even available at this stage. At the time of the denial of defendant's motion, a new party was added and further proceedings...The decision was therefore not a final order."

Issue # 8, 9, 12, 14). Association I, dissolved September 2001, and by statute Code 16-6a-1405, was prohibited from initiating litigation in state court,¹ unless “winding up” activities. As both CC&R (1.1 & 1.2) required it to be an active Corporation, Association I, “lacked the [legal] capacity to bring the action”². In 2004, while relying on the equitable principles adopted in Graham³, Appellees pleaded their case for the Motion to Amend and Substitute Parties (97-110), “a permissible means of remedying the deficiencies. ¶ 16,” and, on contract; (CC&R ¶ 18.2),⁴ whereby, both CC&R allowed “aggrieved” owner to maintain an action, in “a proper case.” Appellees claimed theirs was a proper case, citing (Graham (¶ 18), “due to identity of interest between the original Plaintiff and the substitute Plaintiffs, and ... would not change the ultimate liability sought or imposed.” (185-190:pg 3). However, substitution drastically increased the “liability imposed” on the already burdened Ms (Onyeabor), since it changed contracted roles of substituted parties. ASSOCIATION II cannot be substituted because, (a) Despite similar nomenclature, Association I and II are two different entities, Articles of incorporation and bylaws (159-161) differ. (b) Association II could not replace a non-existent entity, cannot put liens for assessments it didn’t incur, and could not benefit from injunctive relief awarded while it was in a state of neant, pre-incorporation. (See Detail, Exhibit 1). (c) Mr. Raile/LEBR, may not be substituted as he has no right to make assessments, put liens, under either CC&R (18.2), and he cannot replace Association I that’s not there. LEBR could not claim retroactive standing to enforce the preliminary injunction. Hence, the substitution rendered the injunctive relief moot and unenforceable. Raile or LEBR proffered no evidence they were “aggrieved,” never sent any

¹ See, Utah Code Ann. §§ 42-2-5 & 42 -2-10. It is sanctionable under this Act for a dissolved corporation to “act.”

² Graham v. Davis County Solid Waste Management, etc., supra, 1999 UT App 136 at P16. *affirmed without opinion* 994 P.2d 1271 (UT 1999), *citing Haro v. Haro*, 887 P.2d 878, 8880 (Utah Ct. App. 1994). “Rule 15 . . . does not allow a party to amend to create jurisdiction where none actually existed.” Aetna Casualty & Surety Co. v. Hillman, 796 F.2d 770, 774 (5th Cir. 1986)

³ Graham v. Davis County Solid Waste Management, etc., supra, 1999 UT App 136 at P16.

⁴ “failure to comply with same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.”

bills (1306- pg22). Hitherto, claims had been made by the Association (665), not LEBR. The trial court concluded Appellees suffered no “damages.” (Rec.1986 ¶5).

3. Factual Assertions Properly Before the Appellate Court. There are four sources of “facts” that Ms Onyeabor relies on. **First category**, Documents identified and relied upon in the Final Order as binding and authoritative, also in memoranda in the both courts, namely, the April 18, 2000 “Original CC&R” (1532-1568), the August 24, 2000 “Restated CC&R” (1498-1530), Deed for Lot 1(2176), and Deed for Lot 2(1201). Based on the foregoing alone, Ms Onyeabor is entitled to show the trial court and this Court lack jurisdiction. **Second**, Admissible evidence submitted as part of Appellees’ motion for partial Summary Judgment: Affidavits of Sanborn (1110-1115), Jennifer Clark (665), Raile (2170-2173; 1229-1232), and the recorded liens (1185). **Third**, documents submitted in opposition to the motion for Summary Judgment, not stricken: The Plat (1453), undisputed or uncontested pleadings notably, affidavit of Bezdiyan (2124-2128) and Wheelwright (1367-1372). **Fourth**, prior to the entry of August 7th 2007, and the Final Order of the October 1, 2007, both parties briefed Ms Onyeabor’s misnomered Rule 59 motion, with affidavits, and arguments. While the court denied the motion, nothing was stricken (2396-2397).

4. Onyeabor's Arguments Not Raised For The First Time: All issues were raised in the lower court and in the Brief (Appellee Brief pg 50). They are all jurisdictional and may be raised at any time. However, she raised **notice** (Rec.1306-1344 pg18-20; pg 17¶6 (D)), and **standing**, in her “Motion to Dismiss.” (Rec. 81-90) (1306-1344 pg 24 ¶ (I) (K) (L)) (2065-2107 pg 33(G)). **Denial of due process**, raised (Rec. 2065-2107 pg 29(i); pg 27(d); pg28 (f)) (Rec.2215-2228 pg 6 ¶(C)). **2002 changes** raised (Rec. 1306-1344; pg 11-12: ¶80; ¶81; ¶ 82; 83) (2065-2107; pg 3-18) (Also, May 2nd 2007 Hearing). **Fraud** raised, (Rec.2065-2107 pg 9¶47¶48¶ 51) (1306-1344; pg 15¶4(A);pg 21-22) (Rec. 2403-2417 pg 10(2)) (Issue # 13, #15) and **Constructive fraud**

raised, (1304-1344 pg13 (D)), and by both parties at May 2nd 2007Hearing, (Appellees acknowledged it, (381, 391¹). **Stranger to the deed** was raised by the 2002 changes, which excluded Association as an owner. (Rec.1375 ¶5, 1377 ¶11(C)) (2403-2417; pg13) (1306-1344 pg 20¶7; pg14). **Ambiguity** raised, (2403-2417pg 12) (2065-2107;pg 25; pg 32) (1306-;pg 15).

II. WITH NO PROTECTIBLE INTEREST, APPELLEES LACK STANDING ON BOTH LOTS 1 & 2

1. Lot 1 is Exempt. Easements in Both CC&R Apply to Lots Conveyed After the Declaration.

Language,² of the CC&R shows Appellees have no jurisdiction on Lot 1 because conveyance occurred prior to Restated CC&R, not *hereafter* (1306-; pg21¶(8) (2065-2 pg 29). Sanborn had no authority, as a declarant, doing anything with Lot 1, having conveyed every right via warranty deed to Ms Onyeabor, subject to Orig. CC&R. Dansie³ court held Lots are beyond the authority of HOA. Appellees' concession of lot 1, (834-883 pg29) precludes grant of Summary Judgment.

2. Appellees Have No Standing on Both lotsWithout "Legally Protectible Interests"

"[S]tanding is a jurisdictional requirement that must be satisfied" before a court may entertain a controversy. '[L]ack of standing is jurisdictional.' '[T]he moving party must have standing to invoke jurisdiction of the court.' Under traditional test for standing, "the parties seeking relief must have a legally protectible interest in the controversy."⁴

Listed issues # 5-9 and # 14, address the fact Appellees have no standing to enforce both CC&Rs. They lack jurisdiction, for ignoring condition precedents, and for restructuring Platted⁵ and sold Lots, simply by reference. Both CC&R are at issue because the Court's order relies on both (2591), and the Appellees' memorandum (834-881), for partial Summary Judgment acknowledged Lot # 1 is only governed by the Original CC&R. (Appellant Brief pg 20¶ (25)).

¹ "With respect to the property owners Association, Your Honor, it -- you didn't have a duty to speak to her either, They didn't sell the property to her." May 2nd Hearing page 381, 391; & Appellant Brief Page 26-28.

² "all conveyances of Lots *hereafter* made, by whatever means, shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions." (Original CC&R ¶ 4.11; Restated ¶ 4.9)

³ Dansie v. Hi-Country Estates Homeowners Ass'n, 1999 UT 62, 987 P.2d 30

⁴ Jones v. Barlow, 2007 UT 20, P12; 154 P.3d 808

⁵ Stines V. Willyng, 81 N.C. 98, 101, 344 S.E.2d 546, 548 (N.C. 1986) "A map or plat, referred to in a deed, becomes part of the deed, as if it were written therein."

Concession of Lot 1 alone disputes Onyeabor's liability and the claim Ms Onyeabor breached the contract; assuming, there is a contract and with whom. Appellees have no "legally protectible interest" in either of the CC&R because the "common areas", they claim, and easements that they seek to enforce, do not exist. (Issue # 5) (Rec. 2065-2107 pg32&36¶ (h)) "A thing is void which is done against law at the very time of doing it ... and anyone can attack its validity in court."¹ And, under the "stranger to the deed"² doctrine, neither Association I, the unincorporated "Association", nor Association II could assert an entitlement to any easement, based on both CC&R. (Issue # 6). The Appellees held no real property interest at the time a reservation was placed in the deed for Lot # 2 in favor of the surreptitiously recorded Restated CC&R. There is no basis to assert assessments, maintenance, "exclusive control," "ownership," attorney fees, fines, penalties, against either Lots of Ms Onyeabor or herself personally. The Lots are fee simple, private estate, See Dansie,³ the court held Hi-Country HOA provided "unsolicited" maintenance on "Lot", private estate and must bear the cost and attorney's fees. see Murphy.⁴ In Hatch,⁵ court annulled an ordinance, its enforcement and denied Boulder attorney's fees, holding, the County lacked standing, when it failed to adhere to its very own condition precedents. In same manner, here, Appellees' claims are not "ripe." (Issue # 7; Issue # 8; Issue # 9). Next, the right of Ms Onyeabor "to prove that which [she is] able in court is a fundamental tenet of our jurisprudence,"⁶ Appellee, (Brief page 41(H), recite all about Association rights to sue, owner's

¹ Ockey v. Lehmer, 2008 UT 37, P18; 189 P.3d 51.

² Ms Onyeabor is not making the stranger to the deed argument for the first time, and even if the term "stranger to the deed," were to be removed, the argument is still valid. Ms Onyeabor now used a term the court would better understand to argue a theory that she has advanced all along. Easements reserved for the Association on the Onyeabor property, based on the both CC&R are void because the Association is a stranger to the deed, and, may not claim any rights relating to real property. Next, concept of "running with the land" (Rec. 1306-1344 pg 20 ¶ 7(A); pg 16 ¶ 5(A)), and need for Association, to establish "privity of estate, in order to sustain easements that "touch and concern the land," since both easements "run with the land," (Restated CC&R XVIII ¶18.2).

³ Dansie v. Hi-Country Estates Homeowners Ass'n, 1999 UT 62, 987 P2d 30

⁴ Persons are liable who act in the name of defunct corporation fully liable Murphy v Crosland, 915 2d 491, 495 (Utah 1996)

⁵ Hatch v .Boulder Town Council; 2001 UT App 55 P 15, 21 P.3d 254

⁶ Alder v. Bayer Corp., 2002 UT 115 P 82, 61 P.3d 1068.- Dismissal of Quiet Title constitutes denial of due process.

(LEBR's) right to sue, citing Olympus Cove,¹ and totally missing the point. Ms Onyeabor contends that defunct Association I claims to own portions of her lots for years, and initiated a lawsuit, to sustain the ownership claim. Utah Act, 16-6a-1405 states that it may do none of those things. Upon its dissolution, all activities may only relate to 'winding up'. It can't own property, mutate into LEBR or Association II (Utah Code § 42-2-10). Substitution, in itself, is a forbidden action. In Bio-Thrust,² this court upheld a dismissal of action due to dissolved Bio-thrust's "lack of standing." The trial court relied on disputed evidence to grant Summary Judgment, rather than send the case to trial. The evidence Appellees heavily relied on, Notary Crockett, is conceded as "disputed," (Appellee Brief; pg 4), the rest of their evidence are just as speculative.

III. MS ONYEABOR DISAGREES WITH ALL "FACTS." Appellees, (Brief pg 7-16), enumerate "facts, claiming Ms Onyeabor disputed none of them. Specifically, facts #29-32; she asked Sanborn to continue doing her maintenance as she was busy building offices in Lot 1. (Rec.1927: Bill from Sanborn, not Association). Fact # 34; Mr. Raile elected himself president and Ms Onyeabor secretary in her absence, an offer she declined. As to Facts# 35-42; Ms Onyeabor (1375-1379),³ explained why the owners decided to end the attempt at working together. See, affidavit of Bezdijan (2124-2128)⁴. Fact# 45; Castleton/Raile (1229-1232) letter was written after the vote or changes in 2002, by Bezdijan and Onyeabor, an effort to make Ms

¹ Olympus Cove Subdivision v. Kabarznick, 949 P.2d 776 (Utah Ct. App. 1997) Case on p 42 of Appellee Brief

² ¶The district court accepted the Division's offer of proof regarding the dissolution, and accordingly granted the Division's motion to dismiss the claims for a lack of standing." BioThrust, Inc. v. Division of Corporations, 2003 UT App 360 P5, 80 P.3d 164, cert. denied 87 P.3d 1164 (Utah 2004)

³ "The Association is ruled by bylaws determined by its members. We [Bezdijan & Onyeabor, 2002] determined that we didn't need the Association then; we still don't need it now. When the Association is hijacked by one of its members, who has apparent motive of enhancing his own motives, the Association becomes defunct. It is defunct to me." (1375-1379 ¶7)

⁴ ¶13) The covenants we passed that day: **a)** Exclusive control of lots, as depicted on the Plat Map, by each owners and owners only **b)** Exclusive maintenance of lots, as depicted on the Plat Map, by individual owners only **c)** Complete separation of water and security lights from one another and meters be installed for each owner. **d)** Free and independent use of property by each owner of such lots. **e)** Every owner should exit from the access way on his property) that, all owners separate and be as independent from one another as much as possible in order to minimize conflicts. **g)** Ms Onyeabor and Mr. Raile should investigate about separating their common Utility room **h)** Centennial Point Association had no further rights to do anything on any owner's lots without owner's permission **i)** Individual owners had no right to do anything on any other owner's lots without the permission of the Lot owner.

Onyeabor abandon the changes. Fact # 46 blatant misstatement because, by 2002, up until Dec. 2004, (before Bezdijan left, and disputes escalated), owners were abiding by the changes and the only things happening, (pending separation of owners), is in memoranda collectively called “Exhibit 5B,” (Rec. 2151-2158; Exh 12). As affirmation of Onyeabor’s (2112-2124 ¶22) and Bezdijan’s (2124-2128¶13) testimonies, Appellees jump from 2002 to 2005 (facts 46-48). Much of 2002, all of 2003 and 2004 are missing? Facts# 49: By 2004/early 2005, Ms Onyeabor felt need to openly assert that Lots 1 and 2 are her property, that Mr. Raile’s authority on it, was unacceptable. She asked Raile to remove signs indicating her Lots belonged to them, which Raile admitted putting (Rec.306 (7)). Onyeabor warned (1371; 1375-), that if LEBR insisted it owned her Lots and maintained or occupied it, they would pay. Facts #50-58: are misrepresentations.

IV. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT STRUCK THE AFFIDAVITS OF MYRIAM ONYEABOR, TRAVIS HEALEY, ROBERT MILLS AND ALEXANDER UDEH

1. Abuse Of Discretion: (Appellant Issues # 1 and 16) “The standard of review allows for appellate court to review each affidavit.” Appellant Brief pg24¶ (II) (See Murdock.¹) (Rec. 2065-2107; pg 10¶ (57)). Appellees filed a Cross-Appeal, and granted Onyeabor the right to reassert the evidences and arguments she presented in the lower court to refute their claims. By using the affidavits in her arguments, Ms Onyeabor demonstrated how vital they were. Striking them was in error since they met the requirements of Rule 56 Civ P: personal knowledge, lack of hearsay, truthful and specific evidentiary assertions that established a prima facie case. The Klinger V. Kightly,² court warned strict adherence to rules could result in miscarriage of justice. See also,³ (2065-; pg26).

2. Affidavits Had Been Filed In Prior Hearings And Passed 59 Review: The initial affidavits of Alexander Udeh and Ms Onyeabor (1358-1361; 1478-1483), had been rewritten, notarized on

¹ Murdock v. Springville Mun, 1999 UT 39 PP 27, 982 P.2d 65 (Utah 1999)

² Klinger v. Kightly, 791 P.2d 868,869-870 (Utah App 1990)

³ Bayoud v. Nassour, 688 S.W.2d 198 (Tex. Ct. App.1985)

June 22 '07, (2143-2180; 2112, 2163) and filed with Ms Onyeabor's Rule 59 motion in June 2007. The stricken affidavits of Bob Mills, Ms Onyeabor and Travis Healey (1346-1350; 1352-1356), were formerly filed in this matter, before Judge Burmingham (3496; 491-523), and Judge Roth (426-428; 429-431), and were admissible. They were presented anew to the court under the Rule 59 motion (2131-2135; 2137-2142), essentially, a way of asking the court to review the amended affidavits anew, (Rec.2065-; pg 10-11), see Gillett¹. In final minute entry, August/2007 (2396-2397), no affidavits, memoranda or exhibits were stricken, suggesting a favorable review, the court recognizing they were crucial (Rule 803, 804, 807exceptions) (2065-; pg 26-27¶ (V)) (2403-2417). Courts have shown empathy towards pro se litigants Lundahl.² (Rec.2439-2450 pg4¶A).

3. Affidavit of Mr. Walker (2148-2150) is crucial: It shows the degree to which Mr. Raile is claiming ownership/control over Ms Onyeabor's Lots, interfering with her tenants, and how the ongoing 8-year harassing, stalking habits affect her financially, and lead to emotional distress.

4. The "Answer to Plaintiffs' ... Memo of Jan 2007," (1839-1915), contained some affirmative arguments Ms Onyeabor presented to the court to counter Appellees' motion to dismiss her counterclaims. In motion (1787-1794), she explained that she lost her attorney weeks prior to the Summary Judgment being filed, and Appellees vehemently protested her getting extra time.

5. Exhibits 15-21, Were Formerly Submitted In This Case. They were presented before Judge Henriod (1A, envelop), Judge Burmingham ((3496; 491-523), on Rule 59 review, and were not stricken. (Rec.2065; 2386; 2439; 1985) The Exhibits sustain Ms Onyeabor's claims against Appellees' frivolous penalties that run in hundreds of thousands of dollars, show Appellees don't have clean hands, (1306-; pg 22), do not adhere to CC&R restrictions and may not use the Restated CC&R to avenge the fact Ms Onyeabor has thwarted their hopes of turning entire

¹ Gillett v. Price 2006 UT 24; 135 P.3d 861; 550¶10 "any order or decision that does not adjudicate all of the claims is subject to revision at any time before a final judgment on all the claims "

² Lundahl v. Quinn, 2003 UT 11 PP 3-4, 67 P.3d 1000 (Utah 2003)

subdivision of Privately-owned Lots into LEBR trailer park. (1478-1483¶ 17). Next, Appellees submitted the “Corrected Affidavit of Bezdijan,” (2345-2353) plagued with contradictions and misstatements. Ms Onyeabor had moved for it to be stricken; and to allow it, while striking hers is double standards (2439-2450). Appellees gave the court the option of striking elements of the affidavits (1601; 1585; 1636), but the court struck entire Affidavits, most of which had been submitted in this case before. This court must order the stricken evidence reinstated. The trial court’s decision is capricious, and it clearly abused its discretion (2065-pg 29 ¶i pg28¶f).

V. THE AMENDED CC&R WERE NOT VALIDLY ADOPTED UNDER ORIGINAL CC&R

1. All Conditions Precedents Were Ignored (Appellant Issue #5, 6, 7, 8, 9, 10, 11 15): Appellees failed to show the Restated CC&R is validly adopted, unambiguous, and that their claim of “ownership,” vaguely masked in claims of “assessments”, extinguished Ms Onyeabor's fee simple. As to Lots 1& 2, “Methods”/conditions precedents were ignored, so, it was not validly adopted. CC&R ¶4.1 & Utah Code 57-8-6 reserved “Lot” as exclusive private property. Appellees never claimed to have overtly notified Ms Onyeabor, and planting documents will not suffice. Sanborn's “authority to amend,” (Appellee Brief pg 29) is too broad,¹ ignored specifics, “make minor adjustments” (Orig CC&R ¶4.4) (1306-; pg 13-16). He reserved no authority to conduct a one-man Subdivision Amendment, partition (CC&R13.3) or separate Lot (CC&R 4.3).

(i) Changes to the Plat required: Original (CC&R XIV¶(b)), “to amend this declaration and the Plat,” means change of the one (CC&R), demands a change of the other (Plat). It is obligatory, not based on “feasibility” (Appellee Brief pg 29) (Rec. 1306-1344; pg 13-14). They never explained why it was not ‘feasible,’ and the court never asked. Centennial Point is subject

¹ “As a matter of public policy, tort disclaimers in contracts will not be honored unless the disclaimer is specific to the tort it wishes to disclaim.” Robinson v. Tripco, 2000 UT App 398, 21 P.3d 219 (citing Grube v Daun (Wis 1992)

to strict municipal codes, with no exceptions, see Springville.¹ The court, in Rowley² stated, “Plats are writings and parol evidence is inadmissible to explain or modify an unambiguous plat ...or contradict the terms of a document.” References in Restated CC&R won't change the Plat. The Plat must depict all easements (SLCCO § 20.24.030 H; Utah law (10-91-606), failure is Class a C misdemeanor (SLCCO § 20.36. 020; Code 10-9a-803(2). Contrary to Appellee claim (834-883; pg10), Restated CC&R, is not a “conveyance of real estate,” (Code 10-9a-608§ (7)). In Parrish,³ the court voided easements stating, “Additionally, we note that the width of the original right of way is not indicated on this Plat...it is patently ambiguous and void.” So, Sanborn’s “Accessways” “Fences” and “Roads,” (no such thing), could be anywhere.

(ii) “Unless at least 67% of the first mortgagees . . . consent in writing, the Association shall not be entitled, by act, omission or otherwise; a) cannot abandon . . . the arrangement established by this declaration and the Plat.(b)To partition or subdivide any lot.”(Orig.CC&R ¶13.3 ¶4.3)

Appellees claim: a) Ms Onyeabor stated 67% of mortgagees' consent is required to change the declaration (Appellee Brief pg 29). Ms Onyeabor specifically referenced “partitioning” or “separating” (¶4.3) Lots, a necessary act if the “Common Areas throughout” concept, embodied in the Restated CC&R, would materialize. How else would one come up with the newly-found “Common Areas?” Hitherto, there are none. b) That “the provision Ms Onyeabor relied upon ...affects only Association's authority to act.” (Appellee Brief pg.29)- A baseless argument. An Association is a mythical entity, whose existence, only guaranteed by law, Weyeth,⁴ is expressed by “acting;” that's all it can do. The “act” of partitioning Lots (“abandoning...the Plat”), without mortgagee written approval, is prohibited. Even owners may not partition Lots (CC&R¶ 4.3). The

¹ “Municipal zoning authorities [Defendants] are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation.” Springville Citizens v. Springville City, 1999 UT 25 P 30, 979 P. 2d 332

² Rowley v. Marrcrest Homeowners' Ass'n, 656 P.2d 414 (Utah 1982)

³ Parrish v. Hayworth, 38 N.C. 637, 641, 532 S.E. 2d 202, 205 (N.C. App. 2000)

⁴ Weyeth Hardware and Manf Co V. James-Spencer Bateman, 115 UT 110, 47 P. 604 (1897)

provision is unequivocal; Association **shall not**, partition Lots to create new ownership/Common Areas. Orig. CC&R (4.1)¹ precludes Association authority on Lots (1306-1344 pg 20).

VI. THE TRIAL COURT ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT

1. All Appellees' Evidence Lack Credibility: (Issue # 2, 7, 9, 14 &15). Based on WebBank V. American,² it is incumbent on Appellees to provide credible and convincing evidence to sustain grant of Summary Judgment. The trial court's conclusions of law were in error and the facts were not considered in the light, most favorable to nonmoving party (Ms Onyeabor), Carrier.³

2. (i) **ACTUAL NOTICE:** Appellees LEBR/Raile took full responsibility for amending the CC&R (1229-1232, ¶ E), just as Mr. Sanborn did, (1100-1105 ¶18, ¶19, ¶20). Neither one stated Ms Onyeabor was involved (Rec.2065-2107;pg 28¶ (h)). Appellees ardently argued for Summary Judgment, based on the Notary's testimony (834-883; pg 6-11), invoking Utah Code 57-4a-4. The argument Appellees termed "unassailable," was deemed so important, it took exactly 6 pages of a 30-page Summary Judgment memorandum and 3 pages in their Reply Memorandum (1710-1738 pg 9-10), urging the court to strike the affidavit of the signature expert, American Document Examiners (1660-1665), who had found the Restated CC&R was fraudulent, as well as affidavits of any witnesses who controverted Ms Crockett, "a subscribing witness" (834-883 pg 6-11). The Motions were granted. However, in a characteristic manner, Appellees abandon her testimony, as "disputed fact,"⁴ conceding Ms Onyeabor had no actual notice. Crockett had, as a matter of record, acknowledged violating Code 46-1-9, by endorsing an incomplete or fraudulent document (1306-1344 pg 17-20). In the Final order, Appellees relied

¹ Original CC&R(4.1): "Lot Ownership: Estate of an owner. Each owner shall own fee simple to its Lot,"

² "we need review only whether the trial court erred in applying the relevant law and whether a material fact was in dispute," WebBank v. American Gen. Annuity Serv. Corp 2002 UT 88, P13, 54 P.3d 1139).

³ "We view the facts and all reasonable inferences ...in the light most favorable to the nonmoving party." Carrier v. Salt Lake County, 2004 UT 98,¶3, 104 P.3d 1208

⁴ "Appellees' motion for partial Summary Judgment was not premised upon whether or not she signed the Restated CC&R. That was conceded to be a disputed fact." (Appellee Brief; pg 4)

on the argument Ms Onyeabor received a title insurance document, (mentioned once), that disclosed the CC&R before she purchased lot 2. (Appellee Brief;pg 31). Ms Crockett now disputes Appellees, so, the vital ingredient of her “consent” (CC&R¶14(C), is missing Crockett’s testimony is inextricably fatal to the CC&R and to efforts to restore its residual credibility.

(ii) CONSTRUCTIVE NOTICE: If the “title document” were served to Ms Onyeabor on the day of the sale, whereas Raile/Castleton (1229-1231¶E) say, “We spent a considerable amount of time.” The damage had been done behind her back, while Sanborn had ample time to do the honest thing, overtly alert Ms Onyeabor, meet with her refusal, rather than planting documents. The court, by allowing the substitution of “title document,” helped plot the path for the Restated CC&R to escape mandatory sanctions under Utah Code 46-1-9 (1306-1344 pg 17-20). The trial court failed to ascertain the specific circumstances of “title document”; was it served her before she signed the deed and what was the time interval? Did the developer or his agent point out to Ms Onyeabor she had the option to pay them ¼ price money since she was purportedly getting only ¼ of Lot 2, they had claimed to be selling her? The deed never disclosed or reserved “interests” of any strangers to the deed, like the Association? Regardless, the title document “during-signing,” argument is neither material nor significant enough to warrant a claim they gave her notice. Appellees also relied on Sanborn’ authority to amend, (including sold Lots 1, 4-7), violating CC&R ¶4.1 & 18.6. Ms Crockett’s testimony is determinative, because, she did not rescind her endorsement, upon discovering her ‘error’ (Rec.1306-1344 pg 18-20)). Rather, she swore another affidavit to help Appellees bury the information (1416-1419), thereby, impeaching the integrity of the Restated CC&R as well as her integrity as a notary. Utah Code 46-1-9 is not cumulative, it is the law. The CC&R violated Code 46-1-9, and is not recordable. The panacea, by way of “title document” and Sanborn’s “unilateral authority,” will not cure a document that is

barred and, of no legal consequence. If a document shows up in Time A, then, shows up in Time B, looking different, gathers pages, (or loses pages), the two documents are not same. So, which document do Appellees hope to resuscitate; the one in Time A or Time B? (2065-2107pg 28) In *Black's Law*,¹ "A void contract "never had legal existence or effect... cannot...have life breathed into it," Appellees failed to establish, by credible evidence, she had actual or constructive notice.

VII. ASSESSMENT, UNDER THE RESTATED CC&R, IS VALID ON "COMMON AREAS." WAS SANBORN'S DESIRE TO TURN THE SUBDIVISION INTO COMMON AREAS ACCOMPLISHED? (Issue #5, 6, 7, 11, 15)

1. Sanborn's New "Intent" Versus Utah Law: Sanborn states his new "original intent," (1100-1105¶ 9), is "to create Common Areas throughout Cent. Point." But, then, Utah Code 10-9a-606 defines, Common Areas, thus.² Sanborn testified, for 3 years, he worked with City Surveyors, got a Plat of "Lots throughout," approved, and never noticed (Rec.1306-1344; pg 11¶ (B)). Upon meeting Mr. Raile at end of sale, he recalled his original intent (Appellee Brief pg 26). Undisputed facts before the trial court: Plat (1453), of "Lots throughout," and Raile's admission (1229-1231¶17)), contradict Sanborn. Even disputed facts contradict him (2131 ¶ 15; 2112 ¶64-). In sum, the surveyors were competent and Sanborn is not credible. (1306-1344:pg15).

2. Another Set Of Undisputed Facts dispute Sanborn: a) the titles to the property (2175-2176); b) Utah property Tax paper (2160- 2161); and c) "Exhibit A", attached to the Restated CC&R (145-146), they all continue to depict "Lots" as Sanborn had expressed to surveyors on the Plat.

3. Sanborn's Agent Disputes Sanborn; Bob Mills (2131) and Healey (Onyeabor's agent) (2136), were never told Sanborn's intent was, "to create Common Areas throughout," (2131-2134). So, Sanborn and his agent sold "Lots," per Plat, to the public, including Onyeabor. (2065-; pg24-25).

4. No Common Areas Were Created: Utah law holds that were Sanborn to change his intent, he

¹ *Black's Law Dictionary* 1412 (5th 1979) (citing *Nat'l Union Ind v. Bruce Bros.*, 44 Ariz. 454, 38 P2d 648, 652 (1934)).

² *Utah Code 10-9a-606*, "Common area parcels on a Plat - No separate ownership- Ownership interest equally divided among other parcels on Plat and included in description of other parcels. (1) A parcel designated as common area on a Plat recorded in compliance ... may not be separately owned or conveyed independent of the other parcels created by the Plat."

must alert the City (Code 10-9a-608(1)(a)), to trigger the checks and balances (hearings etc). The City is required to inform anyone with direct interest within given distance of property, including Onyeabor (Detail in affidavit of Zoning Commission, Wheelwright (1367-1372)). Sanborn's "Common Areas throughout,"¹ were never created, and Lots are private property, CC&R 4.1.

VIII. APPELLEES HAVE THE BURDEN TO PROVE COMMON AREAS EXIST, ARE UNAMBIGUOUSLY OWNED BY THE ASSOCIATION THAT ONYEABOR'S "FEE SIMPLE" WAS EXTINGUISHED.

1. Restated CC&R Is Not A Conveyance of Title (Appellant Issues #5-10): Even if the Plat were reflective of either CC&R or Onyeabor noticed, "A notice of approval recorded under this Subsection ...does not act as a conveyance of title to real property" (Utah Code 10-9a-608(7)). This Code shows that an agreement between owners, a trade between owners, or Restated CC&R, is not actual title conveyance. (Rec.1306-1344; pg31 ¶ (g); pg 16¶ (B)) Thus, assuming, arguendo, Ms Onyeabor never questioned the validity of the Restated CC&R, it still would not constitute a title to her Lots. Original CC&R (13.3 & 4.3) did not differentiate between sold and unsold Lots; Lots per Plat may not be separated, partitioned, period. Considering Common Areas are not "separately owned," (not a Lot), (per Code 10-9a-606), it is inconceivable Sanborn conveyed Onyeabor's Lots to the Association, as he, apparently, promised LEBR/Raile. Also see Homestead². Briefly, Utah law precludes Association "ownership" or "common areas" on Onyeabor Lots. The conclusion, in Final Order, (3185-3196 pg 9), that quiet title was denied "because the CC&R is valid" is erroneous and reflects serious material misjudgment in this case.

2. Appellees' three Factors Show Why Their Arguments Fail: Factors that justify amendments:

(1) "Right to amend and the method,"(2) must involve "a correction...rather than a complete destruction of it,(3)""amendment...may not be against public policy."(Appellee Briefpg26).

As to Element (1) they readily claim the right to "amend" part, ignoring the "method;"

¹ Id. see footnote on page 13 for definition of Utah Code 10-9a-606(1) common Areas:

² Homestead Golf Club, Inc v. Pride Stables , 224 F.3d 1195 (10th Cir. 2000),Court held that Vague claims and amount of money spent are insufficient to establish ownership rights on real property

(Rec.1306-1344; pg13) Element (2), Once Lots 1(April 24th 2000-Onyeabor), and Lots 4-7 (August 23rd 2000-Bezdiyan), were sold by warranty deeds (CC&R, ¶18.6)¹ (Rec.1839-1915; pg 23 ¶ (L)), Sanborn had no further rights on them, (Rec. 2065-2107 pg 21) no contract to “reform” and “correct.” There is ample evidence that Raile was asking for changes, (Mr. Mills: 2131-2134; ¶ 14, 15, 16), acknowledged he did the changes, and why (1229-1232¶ 14, ¶16, ¶E). That seems to be the real motive (1306-1344 pg 15 ¶ 4(A). Appellees provided no evidence Mr. Bezdiyan, who owned all four back lots, was complaining about “unlocking” his lots. Mr. Bezdiyan established his position by doing the very opposite in 2002 (Rec 1306-1344 pg 11). He separated his supposed “locked” Lots from the rest of the subdivision and became independent of the other Lots, not dependent on them (2124-2128; ¶13/ Bezdiyan. Element (3), this lawsuit is evidence laws and public policies were violated. (1306-pg 14). Appellees acknowledged (1229-1232 ¶13, ¶16); the Plat needed changing, and mortgagees consent needed, but failed to do so themselves.

3. (i), The Precedents Cited By Appellees Show Why their arguments Fail. None of the cited cases violated public policy, laws or the constitutional rights of owners, as in this case. The court in Baldwin² case, specifically, cited their adherence to laws as court's reason for allowing changes (1306-1344; pg 14-16¶ (5A)). (ii), Mr. Sanborn's change of Lot boundaries may only be done by authorities and the City calls it “subdivision amendment.”(1367-1372). (Rec.1306-1344; pg14, 2 ¶A-B). In Rossman,³ the court allowed more flow of traffic until the end of sale, a mere temporary “nuisance.” (Rec.1306-1344; pg 15; ¶3 ¶¶(A-C). Ms Onyeabor has been denied use of her property for 8 years, due to Association, theoretically “owning” the entire subdivision. Ms Onyeabor's business closed because her Lots are “owned” by the Association; major changes with devastating consequences. Unconventional ownership, enforced by intimidation and terror, is not

¹ CC&R 18.6 “declaration or any amendment. to the Plat shall take effect upon is being recorded in official record.”

² Baldwin v. Barbon 773 S.W.2d 681 (Tex. Ct. App.1980)

³ Rossman v. The Seasons at Tiara Radio Assocs., 943 P.2d 34 (Col. App. 1996

an “easement,” it's a “taking,” by conversion, Utah Code 76-6-401(4) (Rec. 2065-2107; pg5¶ (17&18)) (1306-1344 pg25). (iii) Trial Court Accepted Appellee's Justifications At Face Value. Example, change is justified by reference to “error” in the Original CC&R, one clause, 1.5 “Common Areas include: (d) Fences, Open Parking spaces, Roads.” It is an undisputed fact that no Roads, Fences etc., exist in the subdivision, and did not need clarification. As Ms Onyeabor pointed out to the court, right by the “error,” were five clauses that accurately defined Common Areas,¹ which Sanborn ignored. (Rec.1306-; pg16). Erroneous conclusions in Final order reflect the court's failure to critically review Appellees' justifications. Example, (3185-3196;pg 4¶b)

“Both April 2000 CC&R and Restated CC&R define the Cent Point Common Areas to include the same property, i.e parking areas, sidewalk areas, landscape areas and loading dock areas.”

This is a blatant misstatement. The Plat Map (1453-1454) and City, (who approved it (1367-1372), and Original CC&R definition of “Lot” (3.1)¹ would all controvert that conclusion. Why was there need for amendment if merely to produce a reflection of the Original CC&R, and fight over it? (Rec.1306-1344; pg 16 ¶ (5A)). Original CC&R 1.5(a); common areas, “The property and interest therein, excluding the lots ...” contradicts the Final Order. See also, Original CC&R (1.5, (a) (b) (c) (e) (f)) (footnote¹) A few more such conclusions litter the Final Order. Again,

“Lot shall mean any separate space within the property...designated as Lot on the Plat. (¶ 1.9)

In other words, if it's a Lot, it's not Common Areas, in conformance with Utah Code 10-9a-606 & CC&R 4.1. If one adds Code 10-9a-608 ¶ 7 (actual title conveyance required), to the equation, Appellees' “ownership,” as well as the “Common Areas” claims on Lots 1 & 2 collapse. Briefly, nothing Sanborn claims matches the undisputed facts (Rec.2065-2107 pg 32). “Conveyance of

¹ **Common Areas:** 1.5(a) The property and interest therein, excluding the lots. 1.5(b) All Common Areas facilities designated as such on the Plat Map. 1.5 (c) All installations outside of the lots for any and all utility lines and other equipment. 1.5(f) All portions of the property, not specifically located within the Lot. (Original CC&R, (15). ...“**lot** shall mean any separate space within the property...and designated as Lot on the Plat. (¶1.9.

real estate,” as Appellees claim (834-883;pg10), is not the role of CC&R, deeds do that. Restated CC&R were not correctly adopted, and “common areas” do not exist to enforce it on, anyhow.

IX. TRIAL COURT FAILED TO RECOGNISE ONYEABOR’S RIGHT TO TERMINATE THE CONTRACT.

Both CC&R Are Voidable (issue #2, 8) because of voidable circumstances above, Ms Onyeabor terminated all contracts with Appellees. (Rec.1306-1344; pg 24 ¶(I) (K) (L))

“The Association is ruled by bylaws ... determined by its members. We [Bezdiyan & Onyeabor, 2002] determined that we didn't need the Association then; we still don't need it now. When the Association is hijacked by one of its members, who has the apparent motive of enhancing his own motives, the Association becomes defunct. It is defunct to me.” (1375-1379 ¶ 7)

See other Ms Onyeabor assertions.¹ In addition, Ms Onyeabor repudiated the Association by voting along with Bezdiyan in 2002 (2124-2129; ¶13). Ms Onyeabor (1375-1379), cited the fact Mr. Raile misrepresented himself as a defunct corporation, (sanctionable under Code § 42-2-10) (Rec.1306-1344; pg 21, ¶9(A)), while violating her fee simple and constitutional rights. The law allows Ms Onyeabor, as well as any party to a contract, to void the contract in such circumstances, and she did. The court, in Miller v. Celebration,² upheld the voiding of contract by defendants, due to Appellees doing business in the name of a non-entity, concluding, that alone was sufficient:

“Thus, under this section, for a contract to be voidable, it must meet each requirement of a four prong test: first, there must be a misrepresentation, second, "the misrepresentation must have been either fraudulent or material," third, "the misrepresentation must have induced the recipient to make the contract," and, fourth, "the recipient must have been justified in relying on [it]. ¶11 “we agree with defendants that the agreement was voidable at their option. In so holding, we decline Appellee's invitation to apply the principle of mutuality of obligation the application . . . in a case such as this one has great potential to create a contract one party never intended to enter.”

Also, Homestead Golf Club,³ contract is enforceable only with “meeting of the minds of the

¹ “**When Mr. Raile/LEBR** violated the contract by engaging in these acts, Ms Onyeabor felt she was no longer bound by the contract” (Res1306-1344, pg 24¶ II) ... “**Aug of 2004, there** was no Association, Mr Raile/LEBR were using it well for their own ulterior motives and should pay the cost” (Rec 1306-1344, pg 21¶9 (A) . . . “**Onyeabor** was no longer bound by the contract ” (Rec 1839-1915, pg 15 (four), pg 16(nine), pg17) ... “**it is outrageous** for president of Homeowners association, (Mr Raile) to reinstate Aug CCR that's extinguished and claim Ms Onyeabor violated the contract (2065-2107pg11-18¶ 46,51,52, 53,56 60)

² Miller v Celebration Mining Company, 2001 UT 64 PP 10-11, 29 P 3d 1231

³ Homestead Golf Club,Inc v Pride Stables , 224 F 3d 1195 (10th Cir 2000)"A condition precedent to the enforcement of any contract is that there be a meeting of the minds of the parties, which must be spelled out, either expressly or impliedly, with sufficient definiteness to be enforced "⁽⁵⁾ Valcarce v Bitters, 362 P 2d 427, 428 (Utah 1961)

parties.” Next, in Dismissing Ms Onyeabor’s quiet title, Appellees deny Onyeabor the privileges of the title, and, in the same token, waive the obligations that emanate therefrom.

X. THE RESTATED CC&R IS INVALID, UNENFORCEABLE BECAUSE IT IS AMBIGUOUS.

Appellant Issues #5, 6, 8, 11 : In view of her declaratory judgment counterclaim; that “Lots” and “Common Areas” be enforced solely as defined by the Plat Map, Ms onyeabor’s position has always been that both CC&Rs are ambiguous, the Restated more so than the Original. The Original CC&R contained references that were prone to be misinterpreted as evidenced by Appellees’ fluctuating positions, and ambiguities, which are sufficient to preclude the granting of Summary Judgment.¹ However, Original CC&R’s definition of Lots and commons Areas are much more congruent with the Plat.² The court, in Sandy Valley,³ (very similar to this case), viewed the Plat as a reliable and consistent “evidence” of intent (Rec.1306-1344; pg33; (3, 6&7)) (2065-2107; pg 24-25, pg 32). The developer, in Sandy Valley, as in this case, had disregard for the Plat and the conditions precedents, leading to ambiguity as to intent. Restated CC&R is invalid and unenforceable; because it contains mutually exclusive definitions and provisions within itself, and with the plat. (Appellant’s Opening Brief (pages 52-54)). (Rec.1306-1344; pg20¶7 (A) (2403-2417;pg 12). In Dansie,⁴ the Court held, “[i]f a contract is ambiguous, the court may consider the parties’ actions and performance as evidence of the parties’ intention,” Arguments here, as in the Brief, rests on two types of ambiguity: facial ambiguity,(language) and factual ambiguity (intent), (2065- pg 35g). This is an extreme case; interpretations by Appellees are ambiguous, and mutate radically, between seasons and attorneys. In 8 years, their differential interpretations of the CC&R, have led to quantitatively differential ownership rights.

¹ WebBank v. American Gen. Annuity Serv. Corp., 2002 UT 88, P13, 54 P.3d 1139)

² id See footnote page on 16 for Original CC&R definitions of Lot & common areas

³ Sandy Valley Assocs. v. Sky Ranch, 117 Nev. 948; 35 P.3d 964, 968 (Nev 2001)

⁴ Dansie v. Hi-Country Estates Homeowners Assoc., 2004 UT App 149 P 14, 92 P.3d 162)

1. The Plat Map Model is Consistent and affirms there are no Common Areas on Centennial Pointe. This model is espoused by the 2002 changes (which upheld the Plat), by Original CC&R (for the most part), and Code 10-9a-606, (Common Areas, are not Lot)(1306-1344; pg11¶76). “Common elements” (waterlines) exist. Restated CC&R referenced only “Common elements.”

2. Appellees’ Model is Inconsistent. A Juxtaposing of their varying positions on issues reveals a tale of two different Appellees, and portrays the disarray they’ve brought since 2001. **First**, there’s Pre-2004 Appellees: (1229-1232), characterized by Raile/ Castleton (Assoc I Attorney, per Raile (1206¶12) **Second**, Post-2004 Raile/Rappaport Positions. Comparing them on issues:

(i) Both Have Claimed Ownership on Lots 1 & 2, but no title has been produced, by either one. For written pronouncements by Appellees that indicate ownership: (see Footnote¹). Even in current Appellee Brief (page 13¶ (44), they mockingly state, “Ms Onyeabor informed...the Association that she would have vehicles towed that were parked in the Centennial Point parking stalls within her purported “legal boundary.” The Association that “owned” her parking stalls was non-existent. The undisputed facts of the deed and the Plat Map (merged therein) Stines,² show, a) No real estate by, “Centennial Point Parking Lot,” exists (1710-1738 pg 15). **b)** The Restated CC&R is not a “conveyance of real estate.”(834-883;pg 10). **c)** Association, does not “own” any property on Centennial Point (1229-1232; ¶ 14), and therein lies the heart of the dispute since 2001 (2065-2107 pg5 (18). The Property Appellees referenced is actually Ms Onyeabor's Lots, fee simple estate(CC&R 4.1), quite within her “legal boundary” (1306-; pg 31¶ (g)). Restated CC&R covertly vests the Association with illegal authority on Onyeabor Lots,

¹ **Pre-2004:** “If all the parties having an interest in the property agreed, you could change the terms of the declaration. However, because all the parties need access over certain **driveways owned by the Association**, you would still need Common Areas . . . The parking stall are currently controlled by the Association” (1229-1232; ¶ 14) **Post-2004:** “that this conduct occurred while Mr. Raile was standing in the **Centennial Point Parking Lot**, a common area.” (1996-2012; pg 15), **Post-2004:** “Ms Crockett as a “subscribing witness”...Utah Supreme Ct stated, testimony of a subscribing witness, where present, remains preferred method of proving due execution of **conveyance of real estate**.” (834[-883; pg 10) “**Centennial Point Parking Lot and sidewalks** are common areas,”(834-883;pg26) see also Appellee Brief (page 13¶ (44)

² Stines v. Willyng, Inc., 81 N.C. 98,101, 344 S.E.2d 546, 548 (N.C. 1986)

including “exclusive control” (§7.1 §7.5 §7.6), right to “eject” anyone, including the owner, Ms Onyeabor, and(§4.6), “right to police Accessways,”-[butt out-], located on her Lots. Appellees overtly propagate the claims, and unleash Raile on her Lots. With no title, or privity of estate¹, Appellees minimized her quiet title claims, got them dismissed “with prejudice.”(3185-96 pg 9).

(ii) Pre- and Post- 2004 Appellees Disagree on Whether Plat Map Change is Required. (see footnote²), Appellees, never addressed Onyeabor’s invocation of SLCCO § 20.24.030 H, UT Code 10-91-606, and the criminals penalties they incur. (1306-1344 pg 13) (2065-2107; pg 24). Rather, they took refuge in talking about the Condominium Act (Appellee Brief pg 34), wading into other laws, to explain away perfectly unambiguous statutes they ignored. However, see Coleman.³

(iii) They Disagree on Whether 67% Mortgagees’ Written Consent is Needed to Partition Lot? (CC&R 13.3) For their varying positions on this issue, (see footnote⁴). Post-2004 Appellees, in a dramatic shift, while attacking the changes of 2002, switch yet again, “Ms Onyeabor has proffered no facts or evidence to show that she or Mr. Bezdijan obtained any written consent from their mortgagees,”(2324-2353; pg 11¶ III;). They vacillate. By agreeing to Plat change and mortgagee consent, Pre-2004 dispute Sanborn's unilateral authority, while Post-2004 assert his authority has no “limitations” and trumps the burden to adhere to laws (Brief pg 29).

3. Appellees Make Inconsistent Claims That Spill into The Final Order. The Raile /Castleton (Pre-2004) rationale for changing the CC&R (1229-1232, ¶ E), are clearly divergent from Post-

¹ Absence/ Lack of “privity of estate,” runs parallel with “the stranger to the deed” doctrine. See Nelson v. Parker, 687 N.E.2d 187,188 (Ind. 1997) Also, Flying Diamond Oil Corp. v. Newton Sheep Co., 776 P.2d 618, 622-23 (Utah 1989).

² In a bid to disparage the 2002 changes, discourage Ms Onyeabor, **pre-2004** Appellees threatened (1229-1231 ¶19¶13), “separation of the lots would also require a new Plat Map to be made and approvals obtained.” **Post-2004** Appellees' disagree, “The plat is not required to show the easements or common areas to be valid,” and should be done when “feasible.”(Appellee Brief pg 34).

³ “[w]e do not look beyond a statute's plain language unless it is ambiguous.” Coleman v. Thomas, 2000 UT 53,¶9, 4 P.3d 783

⁴ **Pre-2004** Appellees agreed, “You may experience great difficulty among the lenders to change the terms of the declaration at this stage,” (1229-1232; ¶ 16 ¶ 11). Then, **post-2004** Appellees disagree, “The provision relied upon places no limitation on Centennial Point developer, who has reserved express right to unilaterally amend the April CC&R.”(Appellee Brief page 29). In other words, Sanborn is within his right to sell property to Onyeabor, utilize the CC&R to ‘sell’ it to LEBR as long as he “reserved” the intentional fraud

2004- Sanborn's (1100-1105 ¶ 18, ¶19, ¶20). Appellees state, **a)** “Restated CC&R did not alter fee simple,” (Appellee Brief pg 9 ¶12), except the Association now allegedly “owns” 75% of Onyeabor lots (1229-1231 ¶ 14)& (834-883; pg 15¶). **(b)** The Restated CC&R never changed the scheme and Plat Map (Appellee Brief pg 28). That’s the problem; scheme was changed to “Common Areas throughout,” whereas Plat Map of “Lots,” stays same. See also Final Order misstatement.¹ (3185-92 pg 5 ¶ (b)). The Plat Map, composed of Lots, referenced in their Restated CC&R (1.10), as indicant of “Lot,” refutes the Final Order. Briefly, juxtaposing the two Appellees, though lengthy, was essential to drive home the message that the CC&Rs are so ambiguous, Appellees who claim they wrote it, have no consistent understanding of its content. However, Appellee’s change of legal tactics does not soothe the fact Ms Onyeabor has been held hostage on her property, as these differential interpretations evolve. Appellees (843-883 pg29) argue Original CC&R is ambiguous, as reason to amend, and, ironically, that’s all the more reason the court should let them enforce it on Onyeabor’s Lot 1. Her fee has simply evaporated. As noted, she earned about \$60, 000 in penalties, for parking her car in front of her door.

4) Significant Questions Remain: Assuming arguendo, Ms Onyeabor never disputed the validity of CC&R; it is still significant when two purported declarants, Sanborn and Ms Onyeabor define Lot and Common Areas differently. Restated CC&R did not address: **a)** how Association's “exclusive control”/“ownership” relates to Ms Onyeabor's “fee simple **b)** If Association owns Lots 1 and 2, why is it not paying the huge mortgage and taxes, instead of Onyeabor, who cannot use the property, without threat of penalty or tow(665)? (Rec. 1306-1344; pg 20¶7(A)). **c)** Finally, whether Ms Onyeabor would be compensated for “seized,” property and damages? Nothing in CC&R says she would not be, so, the assumption is that she would be. Who

¹ “Restated CC&R did not change the configuration of the Centennial Point respecting the location of building on property, or the nature of Common Areas.” Final Order (3185-3192 pg 5 ¶ (b)).

would do the compensating, the developer or the Association? (2065- pg5¶1;7 ¶18 ¶19; pg18-19).

5 Pervasive Vague References in both CC&Rs: Appellees raised this issue as reason for amending CC&R, (834-883 pg 5), but failed to admit the ambiguity got worse with Restated CC&R. (Rec.1304- pg16 ¶4(B) 5(A)) ((2065-; pg 24-25, pg 32). Restated CC&R referenced “dock areas” as Common Areas. Are parts (about ¾) not immediately being used as “dock area,” part of the Lot? That is why the City,”¹ demands the Plat be changed and easements shown, “by fine dashed lines all easements clearly identified”. In conclusion, the trial court erred by ruling that Ms Onyeabor be returned to this ambiguous situation, and figure out how to survive Raile/LEBR’s shifting tides of defunct Association, resurrected Association, undefined “ownership,” confusing Restated CC&R that even Appellees clearly don't understand.

XI. THE RESTATED CC&R ARE NEW COVENANTS.

Utah Supreme Court rejected claims of a HOA that imposed “unsolicited” maintenance on lots because such authority was not specifically reserved in the deeds, holding,

“Restrictive covenants are not favored in the law and are strictly construed in favor of the free and unrestricted use of property.”² Also “person owning property has the right to make any lawful use of it he sees fit, and restrictions... must be carefully examined.”³

Ms. Onyeabor was clear (2002 & 2004), in her rejection of any services from Appellees or any entity affiliated with them, as well as their presence on her Lots. Also, Courts in jurisdictions around the nation have prevented abuse, and enforcement of pretentious, ambiguous CC&R with new unintended obligations. Sanborn’s Broad “unilateral right to amend,” means substituting one contract for another, Miller.⁴ The Armstrong V. Homeowners⁵ court concluded,

¹ SLCCO § 20.24.030 H

² Dansie v. Hi-Country Estates Homeowners Assoc. 1999 UT 62, P14, 987 P.2d 30

³ Vance S. Harrington & Co. v. Renner, 236 N.C. 321, 324, 72 S.E.2d 838,840 (1952).

⁴ Miller v. Celebration Mining Company, 2001 UT 64 PP 10-11 (?? :o)); 29 P.3d 1231

⁵ Armstrong v. Homeowners Assoc., 360 NC 547, 561; 633 S.E.2d 78, 89 (NC 2006)

“The disputed amendment is invalid and unenforceable... we echo the rationale of the Supreme Ct of Nebraska in *Boyles v. Hausmann*, 246 Neb. 181, 191, 517 N.W.2d 610, 617 (1994): “The law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes in existing covenants.” Here, petitioners purchased their lots without notice that they would be subjected to additional restrictions on use of the lots and responsible for additional affirmative monetary obligations imposed by a homeowners' Association. This Court will not permit the Association to use the Declaration's amendment provision as a vehicle for imposing a new and different set of covenants, thereby substituting new obligation for the original bargain of the covenanting parties.”

In *Meresse V. Stelma*,¹ five owners voted in CC&R that rendered the Lot of the sixth owner unbuildable; the court voided it. (Rec. 1306-1344 pg 11 ¶(80) ((2065-2107; pg 24-25, pg 32).

Appellees are faced with the dilemma that, even if they had standing to enforce either CC&R, they still face the task of finding “Common Areas” on which to enforce it. From the CC&Rs, precedents and laws, the Plat map has final say as to what constitutes “Common Areas,” and “Utah Code 10-9a-606 states Onyeabor's Lots, “separately owned” are not Common Areas.

Ms Onyeabor had warned Appellees, (486; 1375-1379), that were they to tow vehicles off her Lots, or remove anything without her authorization, she would report it as theft. She also noted that, if Appellees insisted her Lots belonged to Association, maintained it to prove so, they would have to pay, pursuant CC&R ¶4.1, Code 57-8-6. Utah Code 10-9a-608(7) precludes their claim of “ownership,” due to lack of actual title conveyance. Rec.1306-; pg21¶9),

“[A]ctual or constructive notice of the intent of his predecessor in title does not impose Association membership on him or the Subdivision's CC&Rs on the Property.” *Dansie*²

*Utah Farm*³ held, “ambiguities are construed against the drafter.” Appellees are the drafters, suing to enforce it in the name of a defunct entity (multiplying the ambiguity). Briefly, both CC&R are not only ambiguous, but are mutually exclusive, hence, unenforceable.

XII. PRINCIPLE OF EQUITY WAS ILL-APPLIED IN RATIFICATION (Appellant Issues# 12)

Neither the “conduct” nor “participation” of Ms Onyeabor, could have created ratification, “as a

¹ *Meresse V. Stelma*, 100 Wn. App. 857; 999 P.2d 1267 (Wash 2000)

² *Dansie v. Hi-Country Estates Homeowners Assoc.* 1999 UT 62, P22, 987 P.2d 30

³ *Utah Farm Bureau Insurance Co. V. Clinton E Cook*, 1999 UT 47; 980 P.2d 685

matter of law,” with Association (II) that did not even exist when the suit was filed. Nor, could she do anything with the Association I *after* its dissolution in September 2001. Ms Onyeabor challenged Raile’s conduct as early as 2001 (Bezdiyan, Mills, Healey (2124 ¶ 5; 2133 ¶ 5; 2136 ¶ 6). Details of the changes made in 2002 are incorporated in the Opening Brief (pg 47-50). Raile confirmed separation of parties (see 2151-2158; ‘Exh 5B’). Finally, in 2004, Ms Onyeabor (1375-1379), overtly repudiated every relationship with the defunct Association¹ See also,² In Swan Creek,³(see Table 1), the Court applied the equitable principle of ratification for factual reason totally absent here. The court’s finding of ratification as a “matter of law” is in error, and made no pretense of, or reference to, making the decision based on principles of equity.

XIII. THE TRIAL COURT ERRED IN DISMISSING MS ONYEABOR'S CLAIMS OF QUIET TITLE, DECLARATORY JUDGMENTS, TRESSPASS, ASSAULT AND EMOTIONL DISTRESS.

1. Quiet Title and Declaratory Judgment Orders (Issues # 16,13, 1&12) a) Quiet Title. In view of Appellees' 8-year long claims of ownership over Ms Onyeabor's “fee simple” Lots 1 and 2, expressed overtly to Onyeabor by Appellees and their cohorts (1478; 1484; 2112;2163-Exh7&7B), and documented by Appellees' assertions in memoranda and court pleadings,⁴ (834-883; pg 10)(1710-1738; pg 15)(1229-1232; ¶ 14) (Appellee Brief (pg 13¶ 44), it is imperative that Ms Onyeabor's claim for quiet title, and Declaratory Judgment be reinstated (2065-2107; pg 25) (1306-1344; pg33) Appellees have not proffered any evidence, in the form of a competing title or protectible interest, to sustain a claim of “ownership” or “exclusive control.” The Plat Map and CC&Rs¶4.1, Utah Code 57-8-6, show Ms Onyeabor owns Lot 1 and 2, fee simple. That’s what

¹ “Association is ruled by bylaws...determined by its members. We[Bezdiyan & Onyeabor,2002] determined that we didn't need the Association then; we still don't need it now. When the Association is hijacked by one of its members, who has the apparent motive of enhancing his own motives, the Association becomes defunct. It is defunct to me.”(1375-1379¶ 7).

² “I asked that the electric and water bills be faxed to me and they never came. On May 22nd 2002, I wrote you a memorandum (copy attached), in which I indicated that any expenses incurred by you without written consent from me will not be paid for by me. I need an itemized version of this bill you sent me so I know what they are.”(1375-1379;¶13). Appellees never sent the water and security light bill (2151-2158; Exh5B;2238; 1927). (Rec.2065 pg 8)

³ Swan Creek Village HOA v. Warne, 2006 UT 22, PP 34-36, 134 P.3d 1122

⁴ See page 19 as well as footnote on pg 19 for Appellees’ assertions of ownership.

Sanborn sold her. She has the deed to them, and that is ample evidence to warrant a quiet title. Dismissing Ms Onyeabor's quiet title claim was not before the court, (May 2nd Hearing pg 110-113), but the court granted it, (3185- 3196 pg 9 ¶(s)), despite protests in her post-hearing motions, (2215-2228 pg 6 ¶(C)). It is an indication the trial court did not quite understand the case. The CC&R does not serve Appellee as a “conveyance of real property” (834-883; pg 10).

b) Declaratory Judgment Order, asserting the Plat is determinant of what constitutes Lots and Common Areas, and striking all references in both CC&R that controvert the Plat. (1306-; pg33¶(3, 6&7) “Plats are writings and parole evidence is inadmissible to explain or modify an unambiguous plat.”¹ Declaratory order, to protect Ms Onyeabor, is warranted due to Appellees' documented propensity to construct CC&R and Statutes to serve their purpose. Appellees raised the issue of ambiguity in the Original CC&R, to sustain a “clarification” that ended up being a new covenant, and a more severe case of ambiguity. A declaratory order would be consistent with the precedents, “plat, referred to in a deed, becomes part of the deed, as if it were written therein.” Stines.² Also, Sandy Valley³. Also, see both CC&R (3.1) (2065-; pg24-25). Page 45 of their Brief, Appellees make a startling conclusion, “Declaring Restated CC&R valid, the trial court disposed of Ms Onyeabor’s inherently inconsistent counterclaims for quiet title and declaratory judgment” The Restated CC&R is not a challenging title and the Association is a stranger to her deeds.⁴

2. Infliction of Emotional Distress: (1306-1344 pg 27-31) (2065-2107 pg10-11(59)) Ms. Onyeabor’s evidence met the burden of proof to show that Appellees, LEBR/ Raile, Ms. Clark and their cohorts, “intentionally engaged in acts outrageous enough, (a) with the purpose of inflicting

¹ Rowley v. Marrcrest Homeowners' Ass'n, 656 P.2d 414, 418 (Utah 1982)

² Stines v. Willyng, INC., 81 N.C. APP. 98, 101, 344 S.E.2D 546, 548 (N.C. 1986)

³ Sandy Valley Assocs. v. Sky Ranch, 117 Nev. 948; 35 P.3d 964 (Nev 2001)

⁴ Potter v. Chadaz, 1999 UT App 95, PP 12-13, 977 P.2d 533

emotional distress, or, (b) where any reasonable person would have known that such would result; and his actions are such nature to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality.” *Samms v. Eccles*,¹ Ms Onyeabor's claim of emotional distress derives from eight-year period, during which Appellees have literally moved onto her fee simple Lots 1 and 2, claim ownership, engage in deliberately abusive conduct, violated the both CC&Rs, (1455-1474; Exh 15), blockaded her building, impeded her business, causing it to close (1455-1474; Exh. 15 Addend II), confronted her tenants (2148-2150;Affid of Walker), assaulted her inside her own offices (Affirmed counterclaim assault against Ms Clark), and called her names. *Alcorn v. Anbro*² court held victim's susceptibility to such abuses and name-calling be considered. The circumstances forced her to move home for her safety, while she still has to pay huge mortgages on property she owns, which Appellees claim to own as well. This caused her to breakdown, in the presence of others, or to report her status to others; Alexander Udeh, Bob Mills, Travis Healey, Bezdiyan (Affid: 2143-2150; 2131-2135; 2136-2141; 2124-2129). When she contacted local authorities about harassment, signs on her property, the local police found probable cause to document her “harassment complaint” # 04-170134. (2065-pg5¶] (15).

“The [Appellees’] conduct must be considered cumulatively in light of all of the facts and circumstances of the case. [T]he trial court inappropriately considered each incident separately, without weighing the effect of the prior encounters between the parties.”³

Separately and combined, all factors enumerated above were “outrageous,” *Samms v. Eccles*,⁴ and suffice to drive any human being into severe and irredeemable mental breakdown. Ms Onyeabor testified how she was able to cope by vacating the premises (1484-1495). She cited her qualifications and expertise in the area of mental health and illness). This court must consider Ms

¹ *Samms v. Eccles*, 11 Utah 2d 289, 293; 358 P.2d 344, 347 (1961)

² *Alcorn v. Anbro Engineering*, 2 Cal.3d 493, 468 P.2d 216, 219, 86 Cal. Rptr. 88, 1970 (Cal. 1970).

³ *Ellison v. Stam*, 2006 UT App 150, P38, 136 P.3d 1242.

⁴ *Samms v. Eccles*, 11 2d 289, 293; 358 P.2d 344, 347 (Utah 1961)

Onyeabor's enduring years of harassment, penalties for using her private estate, of paying mortgage on property she is part-forbidden from using, the fact she is qualified to testify on her Mental condition at any level, and reinstate her claim of infliction of emotional distress.

3. TRESPASS & ASSAULT: a) Trespass: Appellees (834-883 pg 26), acknowledge, "Element of trespass is the physical invasion of the land...trespass is a possessory action." citing Walker Drug¹ The undisputed evidence of signs" ((1455-1474), and written evidences of ownership claims,² show ongoing trespass. Rec.2065-; pg 22¶(3)). When Appellees make overt claim of ownership, place signs on her property saying association owns it, filing lis pendens against Onyeabor property, (Exhibit 15 Adden II) disputing the core of her title; that is a "possessory action." The undisputed evidence, before the court, The Plat (1453), clearly shows the subdivision is composed of "Lots," not "common areas throughout." "[T]he person injured may bring successive actions for damages until [trespass] is abated."³ So, Ms Onyeabor is within her legal right to seek damages for 8-years occupation and claim of ownership she has suffered since 2001. In her letter (Rec.1375-¶1,¶2,¶3¶4), a frustrated Ms Onyeabor reiterates what the Plat indicates, and warns Appellees about trespassing, and controlling her and her Lots. b) Assault:

1. The defendant acted, intending to cause harmful or offensive contact with the plaintiff, or imminent apprehension of such contact; 2. As a result, the plaintiff was thereby put in imminent apprehension of [harm or contact]; and 3. The plaintiff suffered injuries proximately caused by the defendant's actions. Model Utah Jury Instructions 10.18 (1993) (emphasis added); accord Restatement (Second) of Torts § 21 (1965).⁴

The affidavit of Alexander Udeh⁵ provided evidence of actual threat, and physical encroachment on both property and person of Ms. Onyeabor (2143-2148). These demonstrated significant acts, and their impact on Ms. Onyeabor, (emotional distress, fear and apprehension), the actual

¹ Walker Drug Co. v. La Sal Oil Co., 972 P.2d 1238, 1243 (Utah 1998)

² See page 19, specifically footnotes, for written assertions of ownership by Appellees

³ Breiggar Properties, Inc. v. H.E. Davis, 2002 UT 53, P 11, 52 P.3d.1133

⁴ D.D.Z. v. Molerway Freight Lines, 880 P.2d 1, 3 (Utah Ct. App. 1994)

⁵ ¶14 "the day that the Qwest man was there, Mr. Raile and his wife were yelling at my mother, charging at and following my mother because she took down the signs they left on her building." (2143-2146 Addendum II Exh. 11)

physical trespass, above, of LEBR, Raile and cohorts, constituted assault.

4. Fraud, Constructive Fraud, Fraudulent nondisclosure. Ms Onyeabor based much of her Fraud-related claims on (i) Fraud (Appellant Issue #3& 13), and (ii) Constructive Fraud and fraudulent nondisclosure, (Issue # 13 & 15) by Sanborn and Association I & II (LEBR/Raile). She raised the issue of Fraud (Rec.2065-2107 pg 9¶47¶48¶ 51). She raised the issue of constructive Fraud (1304-1344 pg13 (D)), and at the May 2nd2007 hearing, where Appellees' counsel acknowledged she had (See pg 381, 391¹). (iii) Liability: Responsibility of corporations for actions of its principals is "imputed."² See also, Murphy,³ and Utah Code 16-6a-204, both holding that a person acting in the name of a non-existent entity is fully, and personally liable. Association and LEBR, both chose to use a non-entity, Association I to file litigation, in violation of state law. As Ms. Onyeabor, did not help form Association II, which voluntarily surrendered itself as LEBR/Raile, neither she nor her Lots are susceptible to liabilities arising out of this litigation. Evidence that denote fraud: a) Evidence before the court did satisfy Fraud, following three standards set in Armed Force.⁴ b) Mr. Sanborn testified (1100-1105¶ 9), that he owned the rest of the subdivision, except Lot 1, when he recorded the Restated CC&R. He had sold lot 1 to Ms Onyeabor April 24th 2000, and Lots 4 -7 to Mr. Bezdijan August 23rd 2000, prior to recording the Restated CC&R. CC&R.(¶18.6) Rec.1839-1915; pg 23 ¶ (L)), (2065-2107 pg 29¶ (i)). c) Sanborn was aware the Association had no money, intended to usurp 75% of the Lots he sold Onyeabor, and, yet, nothing in the CC&R or law, stated "seized" property would not be compensated for, and denying her a remedy would authorize "larceny by conversion" of property.⁵ d) Association,

¹ "With respect to the property owners Association, Your Honor, it -- you didn't have a duty to speak to her either, either. They didn't sell the property to her." May 2nd Hearing page 381, 391; & Appellant Brief Page26(c).

² Wardley Better Homes and Gardens v. Cannon, 61 P.3d 1009, 99(2002 UT)

³ Murphy V Crosland 915 p 2d 491,495; 284 Utah Adv. Rep.7; (1996 Utah)

⁴ Armed Forces Insurance Exchange v. Harrison, 14 ¶16 70 p 3nd 55. (2003 UT)

⁵ Utah Code Ann. 76-6-401.

as “owner,” (not reserved in Onyeabor’s deeds), emerges, clouding her titles. This court, in Robinson,¹ held, non-specific disclaimers, like “unilateral right to amend,” will not protect Sanborn from costly “negligent misrepresentation,” he knowingly engaged in. LEBR/Raile parading as the non-existent Association I (2002-2005) committed fraud (Act Utah Code 42-2-10), the financial windfall to LEBR being 75% of Onyeabor’s Lots, the prime corner property in the subdivision. e) Appellees’ asserting claims of “ownership,” “exclusive control,” and “right to eject” Ms Onyeabor from her fee simple property, is fraud. Finally, asking for dismissal of her quiet title claim, knowing it was not before the court, is fraud. Evidence That Denote Constructive Fraud, Fraud by Concealment. Standards: Hermansen.² By covenanting with Ms Onyeabor on Lot 1, Sanborn triggered the covenant and his fiduciary duties, Wahrendorff.³ Instead, he failed to disclose to Onyeabor and her mortgagees. a) The Resated CC&R, upon which Sanborn relies to deny Ms Onyeabor Lots he sold her, turned into two different documents, as per the Notary. (1306- pg 17-20). b) Raile, as president, unilaterally rescinded the 2002 agreements and installed the Association, to win a lawsuit, with only 62.5% votes (2065-2107; pg11¶46, 51-56), without meeting/voting. In Levanger,⁴ the court voided CC&R ratified by mail-ballot, citing that changes must occur at meetings, so members have full notice (UT Act 16-6-61). c) Castleton informing Onyeabor what they did in 2000, (1229-1232 ¶ E(17)), “we spent time...to make declaration a workable document,” aware it was “workable” solely for LEBR. Ms Onyeabor was intentionally left out, an indication of fraud by nondisclosure.

XIII. APPELLEES ARE NOT ENTITLED TO ANY AWARD OF ATTORNEY'S FEES

1. Appellees’ invocation of Rule 24(k) to demand Attorney’s fees fails (Appellees, (Brief pg

¹ Robinson V. Tripco, 990490-CA App 200; 21 P.3d 219; 398 (2000 UT) “ tort disclaimers in contracts will not be honored unless the disclaimer is specific”

² .” Hermansen v. Tasulis, 2002 UT 52,P24, 48 P.3d 235 “(1) The nondisclosed information is material, (2) the nondisclosed information is known to the party failing to disclose, and (3) there is legal duty to communicate.

³ Wahrendorff v. Moore, 393 So. 2d 720, 722 (Fla. 1957)

⁴ Levanger v. Vincent, 2000 UT App 103, 33 P.3d 87

21), requested award of attorney fees and costs on appeal pursuant to Rule 24(k) Utah R. App. P. However, it is improper to award attorney fees under Rule 24(k), against pro se litigants, so Rule 24(k) is not applicable. Besides, Ms Onyeabor's Brief is well within the required standards of the Rule 56. They have requested attorney fees and costs for the Summary Disposition, pursuant to Rule 24(k), but there was no reservation for attorney fees in Summary Disposition ruling.

2. Appellant Onyeabor moves the court to award her Attorney's fees. On the other hand, Ms Onyeabor prays the court to sanction Appellees' counsel for making a habit of threatening Ms Onyeabor's attorneys. They threatened to report her attorney, Gregg Stephan to the bar in 2005, and now, Appellees extend their grief to Onyeabor's consulting attorney. It is uncalled for. Considering that the contract is virtually non-existent (her title being denied and the voidances), Ms Onyeabor would ask the court to award her attorney's fees and cost, based on consequential damages, following Bass¹ court opinion, "Attorney fees have been held to be recoverable as special damages if incurred to remove a cloud placed by the defendant on the title." Ms Onyeabor would also pray that, on remand, this court instruct or "seriously recommend" to the trial court to award her attorney's fees, as pro se litigant, and also, for Attorneys who have represented her in the past, based on Pickholtz². This is an exceptional case and, exceptional measures are justified. She's had to defend her property, (not doing much else), against unlawful ownership claims, creatively couched in Assessments, and inspired partly, by opposing counsel's misinformation. Opposing counsels, by representing a defunct entity in Utah court, engaged in sanctionable act (§42-2-5). They merit sanctions, not Appellant consulting attorney, and, that will be left to the court's discretion. Appellees deserve no Rule 24(k) privilege and must be denied.

3. Appellees are not entitled to award of attorney fees based on either CC&R: Provisions

¹ Bass V. Planned Management Seivces. 761 P.2d 566; 89 Utah Adv. Rep. 11; 1988 Utah ¶¶6

² Pickholtz v. Rainbow Technologies; 284 F.3d 1865 (Fed Cir. DC 2002)

based on jurisdiction and standing relies on undisputed facts and will incorporate, by reference, arguments already raised in the opening and reply Brief. **First**, the “Association I” on whose behalf the original litigation was filed in 2004, did not have standing. Under both CC&Rs, the court had no jurisdiction to do the alleged substitution of parties in 2005. One can’t substitute for something that is not there (see also Exhibit 1). **Second**, Association I or II was not designated as holding any property interest in the subdivision at the time of conveyance to Ms Onyeabor of Lots 1 and 2. Absent an express reservation of a property interest in a current property owner, there would be no “ownership” or easement subject to Association authority on any portion of the Platted Lots. **Third**, only Lots are designated on the Plat. The intent of any person or entity cannot circumvent the unambiguous content of a Plat¹ (1306; pg 20¶ 7(A)). **Fourth**, enforcing the Association II authority on Lot 1 & 2 violates criminally sanctionable ordinances, with judicial sanctions. This cannot be. **Fifth**, Appellees lack standing to enforce both CC&Rs on both Lots.

4. Quiet Title, Bad Faith, “Unreasonableness And Attorney’s Fees” (Rec.2065-2107; pg10¶ (55), pg 21 pg 22-23, 24-26). Utah Supreme Court, in Brown v. Moore,² recognizes that good faith and fair dealing is subsumed in every contract. Whether it be Appellees’ unqualified ownership claim, incomplete or fraudulent notarized document, intentionally “reserved” right to sell property twice; these all constitute bad faith. Based on Chipman³ standards attorney's fees are not recoverable if bad faith is shown. Appellees are making “ownership,” claims over Lots 1 & 2, on behalf of a defunct Association I, while surrounded by some of the biggest law firms in Utah, so, it had to be a combination of intentional deception, bad faith, and mark of gross

¹ Rowley v. Marrcrest Homeowners' Ass'n, 656 P.2d 414, 418-419; 1982 Utah “Plats are writings and parol evidence is inadmissible to explain or modify an unambiguous plat”

² Brown v. Moore, 973 P.2d 950, 954 Sup. court(Utah 1998),

³ Chipman v. Miller, 934 P.2d 1158, 1163 (UT App 1997)) “(1)The party lacked an honest belief in the propriety of the activities in question; (2) intended to take unconscionable advantage of others; or (3) intended to or acted with the knowledge that the activities in question would hinder, delay, or defraud others.” ¶ 19

incompetence Rec.1306-1344 pg25) Three of Ms Onyeabor's counterclaims, pending trial, led to cloture of her business, and involves acts that indict the fiduciary responsibility of Appellees and Sanborn. In St Benedict,¹ the court held that unfair dealing is to “intentionally...do anything which will destroy or injure other party’s right to receive the fruit of the contract.” The Trayner,² court denied attorney’s fees for apparent show of bad faith. Referencing other jurisdictions,³ the court in Chipman,⁴ pointed out that the Chipmans were not awarded attorney's fees because Miller never contested the quiet title claim. Utah Code 78-27-56((1) states, quiet title actions brought or litigated in bad faith, means Appellees pay attorney's fees. It is incumbent on LEBR/ the Association” to show adverse evidence, like a competing title (2065-2107;pg 10, ¶ (55)). However, the court dismissed her quiet title (3185-3192 pg 5¶(b)), whereas, any Appellee response would be meritless, anyhow. Their case is both meritless and in bad faith, meeting the standards in Gallegos,⁵ for Code 78-27-56 (1).Appellees are not the prevailing party in this case, in view of Onyeabor’s counterclaims, and the concession of Lot 1. Injury suffered by Appellees, while on Onyeabor Lots, is self-inflicted, and this case parallels Homestead,⁶ where the court held Homestead was wrong in expending resources building golf courses on land, based on some presumed “ownership” while hoping money spent would, then, establish they own the land.

XV. APPELLEES HAVE NOT ESTABLISHED A BASIS FOR CROSS-APPEAL

1. Ms Onyeabor moves the court to summarily dismiss Appellees’ Cross-Appeal, in the light of the compelling arguments and evidence in her Opening Brief, her Reply Brief, and Summary Judgment. Appellees have no standing to enforce either CC&R on Lots 1 or 2. Ms Onyeabor

¹ St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194,198(Utah 1991)

² Trayner v. Cushing, 688 P.2d 856, 858 (Utah 1984),

³ Harkeem v. Adams, 117 N.H. 687; 377 A.2d 617, 619;1977 N.H.

⁴ Chipman v. Miller 934 P.2d 1158. 960194-CA .(1997 UT APP)

⁵ Gallegos v. Lloyds, 2008 UT App 40; 178 p3d 822 cert den. 189 p3 d 1276)

⁶ Homestead Golf Club, inc v. Pride Stables, 224 F.3d 1195,.(10th Cir. Utah, 2000)

hereby incorporates all her arguments, made hitherto, as fully set forth herein.

2. Failure to Bring Lack of Detailed Findings to Court's Attention.

Judicial economy would be disserved if we permitted a challenge to the adequacy of the detail in the findings to be heard for the first time on appeal. Not only is an error in the detail in the findings easy for a trial judge to correct, but it is an error that is best corrected when the judge's findings are fresh in the judge's mind. We decline to offer such remedy unless the petitioner first provided the trial court the opportunity to correct the error.¹

Appellees failed to do so as well, and their cross-appeal must be dismissed.

See also, *Cafferty V. Hughes*,² **court** denied the augmentation of attorney's fees concluding,

"Calculation of reasonable attorney fees is in the sound discretion of the trial court, and will not be overturned in the absence of a showing of a clear abuse of discretion." See *Dixie*. "A trial court's discretion in determining the amount of a reasonable attorney fee 'arises from the fact that it is in a better position than an appellate court to gauge the quality and efficiency of the representation and the complexity of the litigation.'" *Valcarce*³(quoting *Richard Enters v. Tsern* (Utah 1996))

"And [it] may award considerably less. So long as the reduction is supported by adequate findings."⁴

3. Appellees Lack standing. Initially, there was no Association to place penalties, and LEBR/Raile are not authorized to levy penalties (1306-1344; pg21-22) incidentally, this non-entity was "owning" portions of her Lots, "policing [her] accessways; "acts" forbidden by Act 16-6a-1405, (sanctionable by UT § 42-2-10). Association I may only 'wind up," after dissolution not literally turn into Association II or LEBR (1306-1344 pg 11¶ (78)). Despite the substitution, Association I and II are not legally the same entity, (articles of incorporation), and by virtue of differences in their bylaws, (interest appurtenant to each Lot) (159-161). So, the equitable principles of Swan Lake Village could not be applicable here, (see Table 1,⁵) incorporated herein. Association II, still has not established the basis for its claims, considering the changes in 2002, Ms Onyeabor's voidance of the contract, the deficiencies of the Restated CC&R, the

¹ *A.O. v. State (State ex rel. K.F.)*, 2009 UT 4, P63 - P64, 622 Utah Adv. Rep. 11.

² *Cafferty v. Hughes*, 2002 UT App 105, P26. 46 P.3d 233, *aff'd*. 2004 UT 22, 89 P.3d 148,

³ *Valcarce v. Fitzgerald*, 961 P.2d 305, 317 (Utah 1998)

⁴ *Rapple v Rapple*, 855 P.2d 260, 266 (Ut. Ct. App. 1993)

⁵ (Appellant Opening Brief, record at Addendum II, Exhibit 25) Table of Comparison between the variables of Swan lake Village and Centennial Point A side by side comparison of both Subdivisions exposes why the equitable principle applied in the Swan Lake Village case would not apply on Centennial Point, and why the substitution of parties fails as a matter of law

absence of common areas/ownership; Appellees are strangers to the subdivision and Onyeabor's deeds, and thus, lack standing. The Restated CC&R, being incomplete or fraudulent, should never have been recorded, Association I which initiated the lawsuit did not exist and, so, the court had no subject matter jurisdiction. Minute entry (Rec.1976, May/2007), the court held,

“Appellees are not awarded any fines and penalties against Defendant, since these penalties are not damages which have been suffered by the Appellees due to Defendant's breach.” Rec. 1986¶5)

(1304-pg 25) Onyeabor's counterclaims, pending trial, show Appellees are using the Association and CC&R in bad faith. The trial court relied on ill-applied equitable principles of substitution and ratification to grant summary judgment “as a matter of law,” conflicting theories.

4. There is no contract. Appellees dispute Onyeabor's title by dismissing her quiet title. In the absence of title, there is no contract, and no right to attorney's fees. (1306-1344; pg 21¶9;pg 24¶k)

5. Appellees do not have clean hands. Exhibit 15 Addend. II (Rec.1458,1460, 1462, 1464, 1472 1474, 1466, 2163), show Appellees do not have clean hands, do not adhere to restriction, use the Association and penalties to retaliate Ms Onyeabor's protests over occupation of her Lots (1344-pg 25)(2065-2107 pg 10(54)). Appellees never established the standards that determined Ms Onyeabor's car on her property was an infraction and Appellees turning the entire subdivision into LEBR storage facility, in violation of CC&Rs (12.8), is acceptable conduct. Appellees exaggerated the attorney's fees. Ms Onyeabor (2163-2165), reported a specific, 30-minute encounter with Appellees which they had billed for 3½ hours (2215-2223 pg 2-3). In Woodhaven,¹ the court stated such “stipulation will not be enforced.” (Rec.2403-2417 pg 13). The court lacks subject-matter jurisdiction. Absence of contract means no contract obligations. The Restated CC&R, is not recordable, was not validly adopted, is plagued with ambiguity, conditions precedent were ignored, and laws were violated. Ms Onyeabor's three counterclaims, affirmed for trial, and the concession

¹ Woodhaven Apartments v. Washington, 942 P.2d 918, 921 (Utah 1997) “under the basic principles of freedom of contract, a stipulation to liquidated damages for breach of contract is generally enforceable. Where, however, the amount bears no reasonable relationship to the actual damage is grossly excessive, it shocks the conscience, the stipulation will not be enforced.”

of Lot 1, dispute the notion Appellees are the prevailing party. Judge Henriod (305-310) had mutually enjoined both parties in the preliminary Injunction, ordered each party to pay their attorney's fees. Judge Birmingham ruled in favor of Ms Onyeabor (684). Judge Roth ordered both parties to negotiate and each pay their attorney's fees (311-313). Appellees were already in the process of executing the order (See Exhibit 2), had put Ms Onyeabor's property up for Sheriffs' sale, attempted to garnish funds from her bank accounts (2613-2807). Appellees waived the right to complain about attorney's fees since they never complained about it, nor appealed it. They were perfectly comfortable with the award, if it meant selling her home and two buildings.


CONCLUSION AND REQUESTED RELIEF

Based on the foregoing, Ms Onyeabor's Opening Brief and Reply Brief should be accepted by the court and examined in light of the arguments raised therein. The trial court's grant of Summary Judgment must be vacated because of the lack of jurisdiction of the court to hear their claims of attorney's fees, damages and costs. The facts were erroneously construed in a light most favorable to Appellees and must be reconsidered. In addition, Appellees' cross-appeal challenging the award of attorney's fees, non-award of damages, and an award of costs, must be dismissed for failure to appeal it, and for executing the order, merely. It is proper and essential, to remand the case with instructions to the lower court to reinstate those portions of Ms. Onyeabor's counterclaims that were dismissed and enter judgment in her behalf on her claim of quiet title to her property as Appellees provided no adversarial response, and any response short of a competing title would be meritless. The totality of the balance of her counterclaims should proceed to trial. Instruction should be given to the lower court that an order be issued removing all liens and lis pendens Appellees have placed on the Onyeabor home and two buildings, and attorney's fees be granted Ms Onyeabor based on her pleadings on page 30.

DATED AND EXECUTED THIS 23nd day of March, 2009.



Myriam N. Onyeabor, *Pro Se*

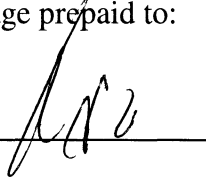


Matt Hilton
Matthew Hilton, P.C.
Consulting Attorney for Appellant
Onyeabor

CERTIFICATE OF SERVICE

I hereby certify that on 24 March 2009, I caused to be mailed a true and correct copy of the foregoing, postage prepaid to:

Myriam Onyeabor



Mr. Silvestrini
Cohen Rappaport & Segal
257 East 200 South, Suites 700
Salt lake City UT 84147

TABLE 1

FOUND TO BE SIGNIFICANT BY THE COURT		NOT PRESENT IN THIS CASE
HOA II has functioned for almost twenty years in which homeowners have accepted as valid; HOA II functioned for ten years + before lots of Defendant acquired (P38)		Appellee 2004 Association was not in existence before lots of Myriam Onyeabor acquired; Appellee 2004 Association not incorporated until after litigation filed.
No competing association has emerged of among the 538 lot owners. (P38)		In February 2002, a "competing" Association was by repudiating Associational authority and validity of Restated CC&Rs; All Lot Owners honored repudiation 2002 – 2004; Appellant Onyeabor reconfirmed repudiation in August 2004; Association incorporated post-litigation and not named Plaintiff until 2005;
1999 - Only 24 of 538 lot owners had not paid assessments (approximately 4.5%) (P38)		Myriam Onyeabor constitutes 33% of lot owners and 25% of lots. Appellee 2004 Association has failed to comply with conditions precedent required to be entitled to payment under Restated CC&Rs. (See pages __ - ___, infra.)
HOA II Articles of Incorporated were unchanged from those of HOA. I. (P38)		Appellee 2004 Association Articles of Incorp. were materially different in that (a) Restated CC&Rs instead of CC&Rs was relied on, (b) owner's/members votes in the Association were changed from each owner having one vote to each lot having one vote, and (c) the Declarant was changed while ignoring the identified Declarants in Restated CC&Rs that included Ms Onyeabor.
HOA II used unchanged Articles of HOA I. Articles of HOA II on file for years before lots acquired (P38)		Appellee 2004 Association was not in existence before lots of Myriam Onyeabor acquired.
Unchanged HOA declaration used by HOA I and HOA II (P38)		2000 Association used CC&Rs from April 21, 2000 through August 24, 2000, and disputed use of Restated CC&Rs from August 24, 2000 through its dissolution on September 21, 2001.
HOA II previously filed local district court litigation to enforce HOA Declaration.(P38)		Litigation started September , 2004; Appellee 2004 Association incorporated November 29, 2004; Order signed September 5, 2005 allowing Appellee 2004 Association become a substituted Plaintiff in litigation September 5, 2005.
HOA II authority to enforce Declaration recognized only as to the facts of that litigation.(P38)		This court's ruling of October 1, 2007 recognizing authority of Appellee 2004 Association has been appealed.

Table to section C. Precedent Does Not Justify Application of Equitable Doctrine Of "Ratification". Comparing Swan lake precedent to centennial Point.

TABLE 2

TABLE 2: IDENTIFYING APPELLANT ONYEABOR'S MAIN ISSUES, AND ARGUMENTS RAISED

APPELLANT ISSUES IDENTIFIED	Appellant ISSUES	APPELLANT CONCEPT(REPLY)	APPELLANT (OPENING B)
Dismissal of Quiet Title, Declaratory order without notice... No title , no contract	Issue # 1, #16	Unconstitutionally denial day in ct pg 32	PAGE 25
Substitution of Assoc II and LEBR Fails as a matter of law	Issue #12	Graham's principle not applicable –pg 2 Lack of standing	PAGE 45
Striking affidavit and other relevant documents	Issue # 1	Denial of due process/abuse of discretion-on pg 7-8	PAGE 21
Evidence as to Signature	Issue # 2	Denial of due process/abuse of discretion-on pg 11-12	PAGE 19, 26
Confidential or fiduciary relationship	Issue # 3	Denial of due process/abuse of discretion-on pg 28	PAGE 26, 31
Improper dismissal of assault and trespass with prejudice	Issue # 4	Denial of Due Process (Notice)—on pg 27-28	PAGE 23, 24 25
2000 Association Has No "legally protectible" interest	Issue # 5	Lack of standing (jurisdiction)on pg 1, 4	PAGE 45, 50
Deeds Lots # 1 and # 2 create no easement rights	Issue # 6	Lack of standing (jurisdict)-on pg 12,29	PG 33,34,38
2004 Association has no "legally protectible" interest with no designation of common area	Issue # 7	Lack of standing (jurisdiction) on pg 13	PAGE 33, 34
Enforcement of Restated CC&Rs violation of criminal code and, hence, void	Issue # 8	Lack of standing (jurisdiction)-on pg 31	PAGE 34
2004 Association failed to satisfy condition precedent to making assessments	Issue # 9	Lack of standing (jurisdict) on pg20-21	PAGE 42
Intent of 2000 Declarant (Centennial Pointe, LLC) irrelevant when contradicted unambiguous Plat and superseded authority to amend	Issue # 10	Denial of due process/abuse of discretion-on pg 9, 16	PAGE 31, 32, 33
Two Purported Declarants' intent not considered	Issue # 11	Denial of due process/ discretion-on page 21	PAGE 52
Disputed Evidence as to Ratification Not Considered	Issue # 12	Denial of due process/ discretion-on pg 24	PAGE 45
Disputed Evidence as to Fraud and Constructive Fraud	Issue # 13	Denial of due process/ discretion-on page 28	Page 26
Without standing, no attorney fees	Issue # 14	Lack of standing (jurisdction)—pg 30-31	Page 50, 56
AMBIGUITY, UNENFORCIBILITY OF Restated CC&R	Issue # 11 Issue # 15	lack of standing-on page 18, 14	PAGE 52
Evidence as to Emotional Distress and other counterclaims	Issue # 16	Denial of due process/ discretion-on pg 24, 25	Page 56

Exhibit 1

DEFENDANT'S OUTLINE OF CAUSES OF ACTION AND POSSIBLE PLAINTIFFS

FIRST CAUSE OF ACTION: Failure to Pay Assessments

1. Plaintiff – DISSOLVED Centennial Pointe Property Owners Association, Inc.
 - 12(b)(1) – irreconcilably dissolved on 9/27/01
2. Possible Plaintiff – NEW Centennial Pointe Property Owners Association, Inc.
 - 12(b)(6) – incorporated on 11/29/04 – not in existence when the assessments occurred
 - 12(b)(6) – cannot “step into the shoes” of the Dissolved Association (Otherwise, the two year statutory window for reinstatement (see § 16-6a-1412) and the statutory loss of rights to carry on activities after dissolution (see § 16-6a-1411(3)(a)-3(b)) are rendered meaningless.)
3. Possible Plaintiff – LEBR Associates, LLC (one property owner in the Association)
 - 12(b)(6) – cannot “step into the shoes” of the dissolved Association (See #2 above.)
 - 12(b)(6) – has no rights under the CC&Rs to make assessments

SECOND CAUSE OF ACTION: Lien Due to Failure to Pay Assessments

4. Plaintiff – DISSOLVED Centennial Pointe Property Owners Association, Inc.
 - 12(b)(1) – irreconcilably dissolved on 9/27/01
5. Possible Plaintiff – NEW Centennial Pointe Property Owners Association, Inc.
 - 12(b)(6) – incorporated on 11/29/04 – not in existence when the assessments occurred
 - 12(b)(6) – cannot “step into the shoes” of the Dissolved Association (See #2 above.)
6. Possible Plaintiff – LEBR Associates, LLC (one property owner in the Association)
 - 12(b)(6) – cannot “step into the shoes” of the dissolved Association (See #2 above.)
 - 12(b)(6) – has no rights under the CC&Rs to take a lien for unpaid assessments

THIRD CAUSE OF ACTION: Injunction for Access under Easement (Utility Room)

7. Plaintiff – DISSOLVED Centennial Pointe Property Owners Association, Inc.
 - 12(b)(1) – irreconcilably dissolved on 9/27/01
- ~~8. Possible Plaintiff – NEW Centennial Pointe Property Owners Association, Inc.~~
 - 12(b)(6) – incorporated on 11/29/04 – not in existence when access problems occurred
 - 12(b)(6) – cannot “step into the shoes” of the Dissolved Association (See #2 above.)
9. Possible Plaintiff – LEBR Associates, LLC (one property owner in the Association)
 - 12(b)(6) – cannot “step into the shoes” of the dissolved Association (See #2 above.)
 - 12(b)(6) – only became interested in access upon receiving Defendant's Motion to Dismiss, and thus, LEBR is not “aggrieved” and this is not a “proper case” under § 18.2 of CC&Rs

Exhibit 2

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
Salt Lake City, Utah 84111
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

FILED DISTRICT COURT
Third Judicial District

OCT 16 2007

SALT LAKE COUNTY

By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

**APPLICATION FOR WRIT OF
GARNISHMENT TO U.S. BANK**

Civil No. 040918762

Judge Robert P. Faust

1. I am the attorney for the judgment creditor.

2. I request that a

Writ of Garnishment X

Writ of Continuing Garnishment

Writ of Continuing Garnishment for child support

be issued and served upon each of the garnishees named below, along with an Answers to Interrogatories form, Notice of Garnishment and Exemptions form, check in the amount of \$10.00, and two copies of the Reply and Request for Hearing form.

3. Judgment was entered against Ms. Onyeabor on October 1, 2007, in the sum of \$95,213.70 (\$18,749.87 past due assessments; \$5,081.14 pre-judgment interest on past due assessments; \$68,294.50 in attorney fees, and \$3,088.19 in costs), with interest accruing on the total judgment at the rate of 6.99% per annum, plus after accruing costs and expenses. **The balance of the judgment plus interest is \$95,505.45, through October 17, 2007.**

4. The judgment debtor is **Myriam Onyeabor, aka Mirian Onyeador, Miriam Onyeabor, Miriam Onyearbor, Myriam Onyearbor, Myriam Ony and/or Miriam Ony**

ADDRESS: 4657 South Farm Meadow Lane
Salt Lake City, UT 84117

SOCIAL SECURITY NO.: XXX-XX-3818

DATE OF BIRTH: November 23, 1956


DRIVER'S LICENSE NUMBER: 145527129 (Utah)

5. I believe that the following persons hold property of the judgment debtor.

Name, address, phone number of person holding property	Description of property (including location and account number)	Estimated value of property	Is the property earnings?
U.S. Bank 170 South Main St. Salt Lake City, UT 84101	All Bank Account(s), Savings Account(s), including, but not limited to, Account No. 1 531 0041 2474	Unknown	Unknown

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
Salt Lake City, Utah 84111
Telephone (801) 532-2666
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Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

FILED DISTRICT COURT
Third Judicial District
OCT 16 2007
SALT LAKE COUNTY
By:  Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

**APPLICATION FOR WRIT OF
GARNISHMENT TO U.S. BANK**

Civil No. 040918762

Judge Robert P. Faust

1. I am the attorney for the judgment creditor.

2. I request that a

Writ of Garnishment X

Writ of Continuing Garnishment

Writ of Continuing Garnishment for child support

Frederick L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
7 East 200 South, Suite 700
Salt Lake City, Utah 84111
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Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

SEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

YVRIAM ONYEABOR,

Defendant.

**APPLICATION FOR WRIT OF
EXECUTION**

(1755 South 4490 West, Salt Lake City,
Salt Lake County, Utah 84104, Lot 1)

Civil No. 040918762

Judge Robert P. Faust

Plaintiff Centennial Pointe Property Owners Association (the "Association"), through its
attorney COHNE RAPPAPORT & SEGAL P.C., requests a Writ of Execution against Defendant
Yvriam Onveabor based upon the following:

1. The Association is the Judgment creditor named in the above-entitled action and
asks to have a Writ of Execution issued and served, along with a Praecipe, Notice of

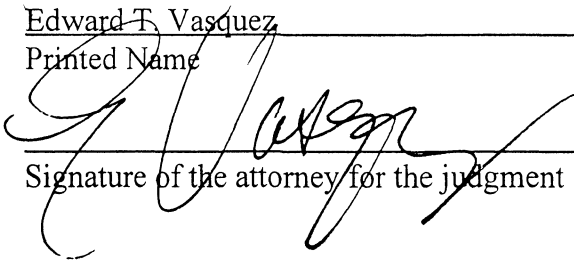
6. I believe that the following persons may claim an interest in the property (include name, address, and phone number), and I request that the Writ of Garnishment be served upon each, along with a Notice of Garnishment and Exemptions form, and two copies of the Reply and Request for Hearing form:

Name of person claiming property interest	Address	Phone number
Unknown		

7. I have attached to this application the garnishee fee established by Utah Code § 78-7-44.

DATED this 18th day of October, 2007.

Edward T. Vasquez
Printed Name


Signature of the attorney for the judgment creditor