DISTRICT COURT, DOUGLAS COUNTY, COLORADO Court Address: 4000 Justice Way, Castle Rock, CO, 80109-7546	DATE FILED: June 12, 2014 3:53 PM CASE NUMBER: 2013CV30571
Plaintiff(s) KENNETH ELLIOTT et al. v. **Defendant(s)** GEORGE BOTSONIS et al.	⚠ **COURT USE ONLY** ⚠
	Case Number: 2013CV30571 Division: 1 Courtroom:

Order on Appeal

Please see attached Order.

Issue Date: 6/12/2014

PAUL A KING
District Court Judge

This Court, having reviewed the record on appeal and the briefs filed by the parties, hereby issues the following Order:

The Plaintiffs-Appellants (hereinafter referred to as the Plaintiffs) appeal the ruling by the trial court refusing to grant Plaintiffs' request for attorney's fees under the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101 *et seq*.) ("CCIOA" / "Act"). Citations to the transcript of the trial will be by trial date, page number, and line number. The Defendants-Appellees will be referred to as the Defendants.

The Rulings of the Trial Court are AFFIRMED.

Surrey Ridge is a semi-rural and equestrian community located approximately 10 miles north of Castle Rock, Colorado. In 1966, it was developed as a community of four filings, consisting of 143 lots, on four Tracts of land. All lots are subject to the Surrey Ridge Declaration of Covenants ("Covenants") which, in particular, include a bridle path easement that is to be maintained by the Surrey Ridge Home Owners Association ("HOA" / "Association"). The community's common areas include a picnic area, riding arena, wilderness areas, and a private park owned and maintained by the HOA as outlined in its By-Laws. The HOA's Articles of Incorporation ("Articles") establish two classes of membership for lot owners: "Full membership," and "Associate membership." (See Plaintiff's Addendum 2, Article V). Every lot owner in Surrey Ridge is a member of the HOA. (See Vol. 9, Plaintiff's Missing Exhibits No. 3, Paragraph 18; No. 4, Paragraph 19).

On May 11, 2012, Defendants purchased their lot in Surrey Ridge. (Tr. 5/7/13, p. 152, lines 24-25; p. 153, line 1). It is undisputed that the lot is subject to the Covenants which Defendants were aware of and had in their possession. (Tr. 5/7/13, p. 158, lines 3-5). As lot owners, Defendants were members of the HOA, though, the trial court transcript is unclear as to which membership class, if any, the Defendants belonged. (Tr. 5/7/2013, p. 23, lines 12-13; p. 152, lines 24-25; p. 153, lines 1-4). The lower court transcript does make known, however, that Defendants were, at the time they purchased their residence, that dues were voluntary to the HOA. (Tr. 5/7/13, p. 210, lines 16-19). Defendants admitted to paying one hundred dollars a year to the Association. (Tr. 5/7/13, p. 210, lines 24-25; p. 211, lines 1-2).

The only issue on review is whether Surrey Ridge is a "common interest community" as that phrase is defined under the CCIOA. Section 38-33.3-103(8) defines a "common interest community" as:

> [R]eal estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is **obligated** to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration. (Emphasis Added by this Court)

In determining whether Surrey Ridge is a "common interest community" the Court focuses on the obligation of lot owners to pay for real estate taxes, insurance premiums, maintenance or improvement of real estate. If lot owners are obligated to pay, directly or impliedly, the Association simply by virtue of their ownership, then Surrey Ridge is a "common interest community." If Surrey Ridge is a "common interest community," then the CCIOA applies, and, therefore, its provision to award attorney's fees to Plaintiffs. To the contrary, however, if lot owners are not obligated, either directly or impliedly, to pay the HOA, then Surrey Ridge is not a "common interest community" and does not fall under the CCIOA. Both parties acknowledge that because the Covenants do not include a prevailing party attorney's fees clause, the sole source of authority for such an award is the CCIOA. *See* C.R.S. §§ 38-33.3-117, 38-33.3-123.

Statutory interpretation is a question of law. *Estate of Guido v. Exempla, Inc.*, 292 P.3d 996, 1000 *cert. denied,* (Colo. Nov. 5, 2012). Further, reviewing courts need not defer to a trial court's interpretation of a statute. *Pagosa Lakes Prop. Owners Ass'n, Inc. v. Caywood*, 973 P.2d 698, 701 (Colo. Ct. App. 1998). Statutory review is done de novo, giving the words in the statute their plain and ordinary meanings. *Platt v. Aspenwood Condo. Ass'n, Inc.*, 214 P.3d 1060, 1063 (Colo. Ct. App. 2009). Appellate courts may also determine the meaning of an undefined statutory word by referring to the dictionary. *People v. Thoro Products Co., Inc.*, 70 P.3d 1188, 1194 (Colo. 2003).

The Colorado General Assembly enacted the CCIOA with the intent of "establish[ing] a clear, comprehensive, and uniform framework for the creation and operation of common interest communities…." C.R.S.A. § 38-33.3-102(1)(a). And, although the Act was adopted after the establishment of the Surrey Ridge HOA,

common interest communities may nonetheless fall within the scope of the Act through the application of section 38-33.3-117. Section 117 applies section 38-33.3-103(8), which contains the definition of "common interest community" as stated at page 2 of this order, to communities created prior to 1992 which would include Surrey Ridge. Section 117 also applies section 38-33.3-123, in particular subpart (1)(b), to cover attorney's fees:

> For any failure to comply with the provisions of this article or any provision of the declaration, bylaws, articles, or rules and regulations, other than the payment of assessments or any money or sums due to the association, the association, any unit owner, or any class of unit owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

Looking to the plain language of the statute, "obligate" means, "[t]o bind by legal or moral duty; [t]o commit (funds, property, etc.) to meet or secure an obligation. *Black's Law Dictionary* (9th ed. 2009). Any obligation Surrey Ridge lot owners would have to the HOA would be found in the Covenants, Articles, and By-Laws provided to each owner upon purchase into the community.

The Defendants' lot is located in Filing 2 of the four filings of Surrey Ridge and is encumbered by the first *Declaration of Protective Covenants* recorded on July 22, 1966. (See Vol. 9, Plaintiff's Missing Exhibits No. 3). Paragraph 6, in relevant part states:

> The easements (sic) areas of each lot shall be maintained continuously by the lot owners with the exception of easements designated for use as bridle paths…and maintenance of all bridle paths shall be by the local homeowners' association.

Paragraph 18 establishes the homeowners' association and, in relevant part, asserts:

> All owners of lots in Filings 1 and 2 of Surrey Ridge, shall be members of said association and shall be entitled to one vote for each lot owned in the conducting of the affairs of said homeowners' association.

On October 22, 1969, the Surrey Ridge developer recorded a second and third *Declaration of Protective Covenants* for Filings 3 and 4, ostensibly changing little in

either Paragraph 6 or 18 of the first *Declaration*. (See Vol. 9, Plaintiff's Missing Exhibits No. 4). In fact, these three Declarations are nearly identical, imposing a common scheme amongst the four filings. Accompanying the filings are the Articles and By-Laws of Surrey Ridge. These documents further describe the role of "members" in the homeowners' association, and the nature of dues charged to lot owners.

Article V of the HOA's Articles of Incorporation establish two classes of membership: "Full membership" and "Associate membership" each defined as follows:

> a. Full membership including all rights and privileges shall be granted to any person residing in or owning property in Surrey Ridge Subdivision who has paid the specified dues for such membership, provided that there shall be allowed only one vote per lot or building site and no more than two votes per full member regardless of the number of lots or building sites he may own.
>
> b. Associate membership, including all rights and privileges except holding office and voting, shall be granted to any person otherwise qualified for full membership, but who has not paid the prescribed dues. (Emphasis Added by this Court)

Plaintiffs argue in their Opening Brief that the meaning of "prescribed," as it is defined in the Merriam-Webster Dictionary and used in the creation of Associate membership for the HOA, establishes a mandatory obligation of homeowners to pay dues to the HOA. To supplement their position, Plaintiffs direct this Court to the Association's By-Laws, specifically Article X, on annual dues. Defendants counter this argument emphasizing that the express provision of Article V in the HOA's Articles of Incorporation mandates that Associate Members pay no dues or assessments. Indeed, the plain language of Article V permits Surrey Ridge landowners to reside in the community **without** paying any dues to the HOA.

The two-tiered approach to membership in the HOA is written specifically to limit the rights and privileges of Surrey Ridge homeowners who have not paid the "specified dues." A reading that the term "prescribed dues" in the Associate members' category

creates an obligation to pay dues to the HOA is incomplete. Using Plaintiffs' own definition and reasoning of "prescribed" ("to lay down a rule; dictate"), associate members are presumed to be paying dues to the HOA via a rule or dictate currently in place by the HOA. Nowhere in the Covenants, Articles, or By-Laws are lot owners in Surrey Ridge informed of "prescribed dues," except in the context of a limited membership position in the Association. Further, it can be just as reasonable that the "prescribed dues" are synonymous to the "specified dues" full members are asked to pay for the privilege of voting and holding office in the HOA. This distinction in membership highlights a lack of mandatory payments to the Association, and is further supported by the timing and implementation of the Articles with the recorded Covenants.

In contrast to the Covenants, the Articles' membership provision, contemplated and established in 1967 shortly after the first *Declaration* was recorded, denies Associate members the right to vote in the HOA. This provision in the Articles of the Association was a clear departure from the first *Declaration* which granted all lot owners a voting rights status in the HOA. Two years later, in 1969, the second and third *Declaration of Covenants* were recorded with no alteration to the suffrage of lot owners from the first *Declaration*. Aware or not of this discrepancy between the Covenants and Articles, the Association clearly intended to have a distinction in membership. A reading of the HOA's By-Laws supports this conclusion.

The By-Laws for the HOA define membership in the Association and differentiates two separate terms for membership as outlined in Article I. Membership:

> Section 3. "Owner" shall mean the record owner of fee simple title to any lot which is part of the properties. The owner(s) of each lot shall have one vote per lot regardless of how many persons are the recorded owners of each lot.
>
> Section 4. "Dues paying member" shall mean the owner of any lot who has contributed the annual dues then in effect. Such a member shall be entitled to all rights and privileges of the Association including the use and

enjoyment of the private park, wilderness areas, and bridle paths in Surrey Ridge.

The definition of an "owner" in the By-Laws is similar to the language and descriptions as the Covenants in establishing Surrey Ridge's HOA. Article I, Section 3 of the By-Laws gives lot owners one vote per lot in the Association. Paragraph 18 in the first *Declaration* and Paragraph 19 in the second and third *Declaration* also provide lot owners one vote for each lot owned in conducting the affairs of the organization.

Similarly, the By-Laws make a distinction between a lot "owner" in Surrey Ridge and a "member" of the Association. A "dues paying member" is defined in Section 3 as one "who has contributed the annual dues then in effect." Not only is the use of the word "contribute" important in emphasizing a lack of mandatory payment, but so is the elevated status awarded to lot "owners" by becoming a "dues paying member." In fact, the very next sentence describes the benefits of being a dues paying member, including entitlement to the rights and privileges of Association membership and the use and enjoyment of the common areas.

Plaintiffs argue that the annual dues mentioned in Article I, Section 4, and defined in Article X of the By-laws mandate that all lot owners, as members of the HOA, must pay annual dues. Plaintiffs are correct to a certain extent, however, their understanding of "members" is misplaced. Article X, Annual Dues of the By-Laws hold:

> Each *member* shall contribute annual dues in an amount *determined by the members at the annual meeting for election of directors*. Such dues shall first be applied by the Board of Directors for payment of property taxes on Association property, next to reasonable maintenance of the bridle paths and common areas, and finally to such other and further use as the Board may determine for the benefit of the Association from time to time. (Emphasis added).

The "annual dues" that members are asked to contribute are determined by the members during the annual meeting for election of directors, and annual dues are established by vote. Because only full membership members are given the right to vote, and full membership is a class of Surrey Ridge owners whom have "paid the specified dues," there is no obligation that all lot owners must pay dues to the HOA. To

hold to the contrary would mean that non-paying members would have the right to determine, by vote, the amount paying members would need to fund the annual dues. Such an outcome would also destroy the membership distinctions written in the Articles of the HOA, which encourages, but does not mandate, lot owners to join the Association to obtain the benefits and privileges attached to Full membership.

To this point, Plaintiffs admit that the raising of annual dues to the HOA occurred over the course of several years, and that the voting was not done by the general membership. (Tr. 5/8/13, p. 73, lines 10-20). Annual dues were increased at the subjective viewpoint of the Board of Directors of the HOA. (Tr. 5/8/13, p. 73, lines 21-25). These annual dues went to the treasury and were used to pay for maintenance work of the common areas, however, budgetary items, such as the cost to contract work to maintain the riding arena, were never brought to a vote of the Association membership as a whole. (Tr. 5/8/13, p. 68, lines 9-13).

Moreover, funds for the HOA, derived from the annual dues, were admitted to be voluntary by HOA board member and past president, Ken Elliott. (Tr. 5/8/13, p. 62, lines 12-15). Mr. Travis Reeder, HOA board president from May of 2012 to June of 2013, also acknowledged that annual dues were voluntary, but that there were never any shortfalls of funds to the HOA. (Tr. 7/10/13, p. 68, lines 5-8; p. 69, lines 1-3). Mr. Reeder discussed the need for the HOA to attempt to implement certain policies and procedures, among which were to make dues mandatory, but the HOA never adopted these policies nor took affirmative steps towards amending the Covenants, Articles, or By-Laws to effectuate these procedures. (Tr. 7/10/13, p. 71, lines 4-14). To the contrary, the board, under the leadership of Mr. Reeder, took action to directly reverse any attempts to make dues mandatory for all lot owners by revoking certain guidelines by a previous HOA board that had attempted to make annual dues compulsatory. (Tr. 7/10/13, p. 71, lines 15-24; p. 72, lines 1-2).

The argument by Plaintiffs that the HOA must stand with its figurative hat-in-hand relying on the good will of lot owners to fund the Association is simply misplaced. Neighborly good-will is encouraged by the HOA through participation in the direction of the community through Full membership with the HOA. Full members, who pay the

voluntary dues, direct the Association by voting and holding office. Associate members can do neither.

Even if Plaintiff's contention that Surrey Ridge lot owners may attempt to leech off of the generosity of their annual dues-paying neighbors, a fact this Court acknowledges has not happened in the 47 years of this community's existence, full members have the capability of amending their By-Laws to mandate that all lot owners pay assessments to the HOA; a procedure Associate members are not entitled to because of their inferior status. Article XI, Amendments, provides a way in which members of the HOA can vote to amend the By-Laws to direct that all lot owners pay annual dues, to properly establish Surrey Ridge as a "common interest community," and, therefore, subject itself to the CCIOA.

The Surrey Ridge HOA did attempt to define the community under the CCIOA, however, this was ultimately not implemented by the Association. Ken Elliott, president of the HOA during this effort, engaged the services of Mark Payne, a homeowner's attorney, for the purpose of providing responsible governance policies for the Association to comply with the Act. (Tr. 7/10/13, p. 40, lines 6-21). The legal opinion of Mr. Payne, drafted and provided to the HOA board, recommended that the community comply with the Act's regulations. (Tr. 7/10/13, p. 41, lines 9-16). Although there was some confusion as to whether or not recent HOA boards had complied with Mr. Payne's opinion, Mr. Reeder, HOA President shortly after Mr. Elliott, made clear that the HOA did not have any policies or procedures in place that referenced the CCIOA. (Tr. 7/10/13, p. 72, lines 3-6). As President of the HOA, Mr. Reeder informed the trial court that the reason for removing the CCIOA policies was procedural; there was no vote, no minutes, nor any evidence that the HOA followed its own amendment process as required by the Surrey Ridge Covenants or By-Laws. (Tr. 7/10/13, p. 72, lines 20-25; p. 73, lines 1-9).

The Surrey Ridge HOA, via the actions taken by its Board of Directors, clearly declined to be part of the CCIOA. The Association took steps not to amend its Covenants or By-Laws to comply with the Act, and went further in ignoring a legal opinion suggesting the community do so. Surrey Ridge removed policies and procedures that referenced compliance with the CCIOA, and at no point followed its

own methods to properly vote and seek community approval for compliance with the Act. To now request that this Court find Surrey Ridge a "common interest community" under the CCIOA, would be to invalidate the manifest intentions of the community, abrogate the Covenants, Articles, and By-Laws of Surrey Ridge, and supplant the authority of the HOA to determine its own destiny. To comply with the CCIOA is a decision that should be made by the Surrey Ridge HOA, not this Court. This was in fact articulated by the trial court in its ruling (Tr. 9/4/13, p. 15, lines 1-8). The Covenants, Articles and By-laws do not impose an "obligation" on landowners in Surrey Ridge to make payments to the HOA.

There is another analysis in determining whether a community is a "common interest community" and this involves a determination as to whether a "common interest community by implication" has been created which would fall under the scope of the CCIOA. Plaintiffs' make this claim and point to the Colorado Supreme Court case of *Evergreen Highlands v. West*, 73 P.3d 1 (Colo. 2003) as support for their claim.

In *Evergreen*, the court addressed the primary question of the validity of a covenant modification by the Evergreen Highlands homeowner association. The issue became whether or not the requisite majority of lot owners may "change or modify" the existing covenants by the addition of new covenants which, amongst other things, assess dues on all lot owners in the subdivision to pay for the maintenance of common areas.

The covenants for the Evergreen Highlands Subdivision were filed in 1972, but did not mandate lot owners be members of or pay dues to the homeowner association. In 1973, the home owner association was incorporated for the purposes of maintaining the common areas and facilities, enforcing the covenants, paying taxes on the common areas, and determining annual fees. The homeowner association relied on voluntary assessments from lot owners to pay for maintenance of and improvements to a park area that was conveyed to the association by the developer in 1976.

The Respondent in *Evergreen* purchased his lot in 1986 when membership in the homeowner association and payment of assessments was voluntary. In 1995, lot owners of the community voted to modify the covenants, pursuant to the covenant's modification clause, to require all lot owners become members of and pay assessments

to the homeowner association. The 1995 amendment also gave the homeowner association the power to impose liens on the property of any lot owners who failed to pay their assessment. The Respondent voted against the amendment but it was approved by the community under the procedure of the covenant's modification clause. The Respondent subsequently refused to pay the mandatory assessment and the homeowner association threatened to record a lien against his property. In response to that threat, Respondent brought suit challenging the validity of the 1995 amendment.

The court in *Evergreen* upheld the covenant modification and addressed the implied right of the association to levy assessments against lot owners in order to maintain common areas of the Evergreen subdivision by holding "that, even in the absence of an express covenant mandating the payment of assessments, the Association has the implied power to levy assessments against lot owners in order to raise the necessary funds to maintain the common areas of the subdivision." *Id*. at 4. The court was also motivated in reaching its holding by the legislative purpose behind the CCIOA to strengthen homeowner associations in Colorado through enhancing their financial stability and promoting efficient property management. The court in *Evergreen* adopted the approach reflected in the most recent version of the Restatement of Property (Servitudes) that a common interest community by implication can arise:

> [W]here the declaration expressly creates an association for the purpose of managing common property or enforcing use restrictions and design controls, but fails to include a mechanism for providing the funds necessary to carry out its functions. When such an implied obligation is established, the lots are a common-interest community within the meaning of this Chapter. Restatement (Third) of Property (Servitudes) § 6.2 (2000).

As the *Evergreen* case was an issue of first impression in Colorado, the court based its decision on a comparison of sister-state case law to resolve the issue of covenant modification. In its analysis, the court examined two distinct lines of case law pertaining to covenant modification and when judicial bodies were more apt to disallow the amendments. The court in *Evergreen* adopted the body of law most pertinent to the facts in *Evergreen* and supplemented its decision by noting that the cause of such divergent lines of cases were based on

the differing factual scenarios and severity of consequences that each case presented. The *Evergreen* court stated, "In those cases where courts disallowed the amendment of covenants, the impact upon the objecting lot owner was generally far more substantial and unforeseeable than the amendment at issue here." *Id*. at 6. Applying the *Evergreen* decision to the case at hand, this Court finds several distinctions, all of which do not establish Surrey Ridge as a "common interest community by implication."

The Surrey Ridge HOA refused to be part of the CCIOA and took steps to affirm that decision. The HOA board sought the advice of an experienced homeowner's association attorney and asked for a legal opinion as to the applicability of the Act to Surrey Ridge. Upon being told that the community was subject to the CCIOA and should adopt policies to comply with the requirements of the Act, the HOA declined to follow this legal opinion and took actions to negate the CCIOA's application to Surrey Ridge by removing any policies and procedures referencing the Act's bearing on the community.

The homeowner association in *Evergreen*, however, never weighed the CCIOA's relevance to its community and did not consider the Act prior to its covenant modification. The *Evergreen* court's decision to hold the subdivision a "common interest community by implication" stemmed directly from the homeowner association's counterclaim against the Respondent for uncollected assessments. The implication creating the common interest community came from the implied power to levy assessments against lot owners to provide for maintenance of the common areas in the Evergreen Highlands community as Respondent had refused to pay his share. No such implication can be drawn by the facts in this case.

Further, the lower court transcript in the present litigation revealed that, even if Surrey Ridge had sought to be a community subject to the regulations of the CCIOA, the HOA did not follow the appropriate steps to amend its covenants to do so. To the contrary in *Evergreen*, the homeowner association did modify its covenants in accordance with its modification clause. Although this modification was not a vote by Evergreen Highland lot owners to be part of the CCIOA, it does show intent by that community to establish itself as a "common interest community" by requiring that all lot

owners be members of and pay assessments to its homeowner association tasked with the maintenance of and improvements to its common areas. The Surrey Ridge HOA has never followed its amendment procedures, in spite of recommendations to do so, to comply with the provisions of the CCIOA or make assessments mandatory. The HOA's actions clearly show intent to be governed by its original covenants in place of the articles of the Act. This Court cannot ignore such behavior and apply the CCIOA to Surrey Ridge as a "common interest community by implication," simply because its covenants do not impose mandatory payments. Perhaps most importantly, there is nothing in *Evergreen* that indicates the Respondent there had an option of being an "associate member" of the HOA and not making any voluntary payments. In the present matter Article V of the HOA's Articles of Incorporation permits a landowner to be an associate member of the HOA without making any payments. There can be no "common interest community by implication" requiring payments by members when the articles of incorporation create a specific class of members who are not required to make payments.

In addition, unlike Defendants who were enjoined from constructing an outbuilding, the Respondent in *Evergreen* brought a lawsuit challenging the validity of a covenant modification in response to the Evergreen homeowner association's threat to impose a lien on his property for his refusal to pay assessments. The court in *Evergreen* was faced with the issue of deciding whether the homeowner association had an implied power to collect assessments from its members in the absence of an express covenant, under the factual scenario of the Respondent refusing to pay his proportionate share for the repair, upkeep, and maintenance of the Evergreen Highlands' common areas. The homeowner association in *Evergreen* argued before the court that, based on Respondent's breach of the implied contract obligating him to pay his share, it was entitled as a matter of law to collect the unpaid assessments from Respondent. The facts before this Court are entirely different.

The Defendants are not threatening to withhold funds to the HOA. To the contrary, Defendants have paid money to the Association. The issue before the lower court was the enforcement of the land use and architectural covenants of Surrey Ridge to prevent Defendants from constructing an outbuilding on their Lot. The Plaintiffs' did

not assert a claim for breach of an implied contract over unpaid assessment fees as the Evergreen homeowner's association did, and their efforts to establish Surrey Ridge as a "common interest community by implication" are solely to obtain attorney's fees. The application of the CCIOA to an entire community, a community that does not desire to be part of the Act, based on a request by Plaintiffs to award attorney's fees in addition to their permanent injunction is unnecessary. Applying similar logic as the court in *Evergreen* articulated regarding the impact of covenant modification to objecting lot owners, imposing the Act on Surrey Ridge would have a far more substantial and unforeseeable result than desired. The facts of this case counsel restraint.

In sum no binding legal duty exists obligating Surrey Ridge lot owners to "pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate" to define Surrey Ridge as a "common interest community" under the CCIOA. § 38-33.3-103(8) . This is because payments to the HOA are voluntary as there are two-tiers of membership in the Association that expressly limit the payment of annual dues to Full membership members. Associate members do not enjoy the rights and privileges of voting or holding office in the HOA. The HOA board has confessed the voluntariness of annual dues and willfully chosen to ignore requests to amend the community's By-Laws and Covenants to make dues obligatory. Moreover, the Association's Board of Directors sought out a legal opinion as to the coverage of the CCIOA and, ultimately, refused the advice of a homeowner's attorney to comply with the Act. The combination of these facts brings this Court to the conclusion that Surrey Ridge is not a "common interest community" and does not desire to become one under the CCIOA.

In addition any attempt to argue that the landowners are part of a "common interest community by implication" also must fail. Surrey Ridge has specifically decided not to become a CCIOA governed community and the attempt to bestow CCIOA status on Surrey Ridge for the purpose of imposing attorney fees in this case is rejected by this Court. The Plaintiffs requests that this Court find that Surrey Ridge is a "common interest community" and the Plaintiffs are entitled to attorney fees pursuant to the CCIOA are DENIED. The permanent injunction issued by the trial court remains in effect. The rulings and order of the trial court are AFFIRMED.