

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

RAY M. COLLINS and CAROL J.  
COLLINS,

Plaintiffs,

vs.

DAVID W. HALL and MARGARET R.  
HALL Trustees, and their successors in trust,  
of the D & M Hall Community property  
trust, dated March 14, 2005, and also all  
other persons or parties unknown claiming a  
right, title, estate, lien, or interest in the real  
estate described in the complaint in this  
action,

Defendant.

**COPY**  
Original Received

AUG 21 2014

Clerk of the Trial Courts

By                      Deputy

CASE NO. 1JU-14-00771 CI

**ANSWER AND COUNTERCLAIM**

In response to the Plaintiff's Complaint in this action, Defendants David W. Hall and Margaret R. Hall, Trustees of the D & M Hall Community Property Trust ("Hall Trust"), by and through their attorneys of record, Faulkner Banfield., P.C., make the following answer and counterclaim.

**I. ANSWER**

1. Defendants admit that Plaintiffs are adult residents of the First Judicial District, residing in Juneau, Alaska.

2. Defendants admit that David W. Hall is and at all relevant times has been an adult resident of the First Judicial District, residing in Juneau, Alaska. Defendants deny that all successor trustees of the Hall Trust are residents of Juneau.

3. Defendants admit that Margaret R. Hall is and at all relevant times has been an adult resident of the First Judicial District, residing in Juneau, Alaska. Defendants deny that all successor trustees of the Hall Trust are residents of Juneau.

4. Defendants admit that Plaintiffs are the owners of the property described in the Complaint as Lot 14, Area 1, Colt Island Alaska Recreational Development according to Plat No. 75-11, U.S. Survey No. 1755 (“Collins property”).

5. Defendants admit that Plaintiffs acquired title to the Collins property by deeds dated April 30, 1990 and February 12, 2013.

6. Defendants admit that this court has jurisdiction and venue is proper in this district.

7. Defendants admit that Plaintiffs have the right to possess the Collins property. The dispute in this case concerns the location and boundaries of the Collins property.

8. Defendants admit that they own and possess a lot adjacent to the Collins property described as Lot 15, Area 1, Colt Island Alaska Recreational Development according to Plat No. 75-11, U.S. Survey No. 1755 (“Hall property”).

9. Defendants admit that they acquired title to the Hall property by deeds dated July 15, 1994 and March 14, 2005.

10. Defendants deny that registered land surveyor J. W. Bean (“Mr Bean”) has ever surveyed and monumented the Hall property and Collins property boundaries and the ingress and egress trails within the Colt Island Recreational Development.

11. Defendants deny the allegations in paragraph 11 of the Complaint that the survey monuments put in the ground by Mr. Bean have been used by all owners of developed lots within Colt Island Recreational Development other than Defendants as a basis for construction and establishment of trails.

12. Defendants deny that it is clearly evident that original home construction by the Defendants and their predecessors conformed to the survey monuments established by Mr. Bean.

13. Defendants deny that they constructed a shop-generator building that encroaches on the Collins property. Defendants deny that they remodeled the outhouse built by their predecessors in title. Defendants deny that any survey monuments were established by Mr. Bean before they began construction on their building.

14. Defendants admit that they obtained a survey, recorded as a Record of Survey in the Juneau Recording District at Plat No. 2012-32 (“Record of Survey”), that established boundary lines for the Hall property that do not coincide with the boundary lines suggested by the survey monuments that Mr. Bean appears to have set in 2009.

15. Defendants admit that Exhibit 5 to the Complaint is a true and correct copy of the Record of Survey.

16. Defendants admit that the Record of Survey shows a 5’ gravel path extending across the area marked as the Totem Pole Trail and on to the area marked as Lot 15, Area 2.

17. Defendants are without knowledge sufficient to respond to the allegations in paragraph 17 of the Complaint regarding the location of the Totem Pole Trail and therefore denies them.

18. Defendants are without knowledge sufficient to respond to the allegations in paragraph 18 of the Complaint regarding the location of the Totem Pole Trail and therefore denies them.

19. Defendants admit that there is a dispute between Plaintiffs and Defendants concerning the boundary lines of the Collins property.

20. Defendants are without knowledge sufficient to respond to the allegations in paragraph 20 of the Complaint regarding the surveys allegedly conducted by Mr. Bean and therefore denies them.

21. Defendants deny the allegations in paragraph 21 of the Complaint regarding trespass and tampering.

22. Defendants deny the allegations in paragraph 22 of the Complaint regarding any entry on the Collins property.

23. Defendants admit that protective covenants were recorded in Book 128 at Page 934 of the Juneau Recording District and that a true and correct copy of the protective covenants is attached as Exhibit 6 to the Complaint.

24. Defendants admit that their outhouse does not have a self-contained chemical holding tank.

25. Defendants deny that their shop-generator building or their outhouse encroach on the Collins property or are outside the set-back requirements established in the protective covenants or that Mr. Bean has established any property lines relevant to this action.

#### **COUNT I – DECLARATORY JUDGMENT RE BOUNDARY LINES**

26. Defendants re-allege their responses to paragraphs 1-25 above.

27. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that the survey monuments allegedly placed by Mr. Bean correctly set forth the boundary lines of any property.

#### **COUNT II – QUIET TITLE**

28. Defendants re-allege their responses to paragraphs 1-27 above.

29. Defendants deny the allegation that their actions entitle Plaintiffs to an order confirming their claim to ownership of the Collins property with the boundaries supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

#### **COUNT III – ESTABLISHMENT OF BOUNDARIES**

30. Defendants re-allege their responses to paragraphs 1-29 above.

31. Defendants deny the allegation that their actions entitle Plaintiffs to an order confirming the boundaries of the Collins property as supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

#### **COUNT IV – RECOVERY OF POSSESSION**

32. Defendants re-allege their responses to paragraphs 1-31 above.

33. Defendants deny the allegation that their actions entitle Plaintiffs to recovery of possession the Collins property with the boundaries supposedly indicated by the survey monuments allegedly placed by Mr. Bean.

#### **COUNT V – TRESPASS**

34. Defendants re-allege their responses to paragraphs 1-33 above.

35. Defendants deny the allegation that their actions entitle Plaintiffs to recovery for trespass.

#### **COUNT VI – DECLARATORY JUDGMENT RE PROTECTIVE COVENANTS**

36. Defendants re-allege their responses to paragraphs 1-35 above.

37. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that their outhouse violates the protective covenants.

#### **COUNT VII – DECLARATORY JUDGMENT RE SET-BACK REQUIREMENTS**

38. Defendants re-allege their responses to paragraphs 1-37 above.

39. Defendants deny the allegation that their actions entitle Plaintiffs to a declaratory judgment that the location of their shop generator building or outhouse violates the set-back requirements in the protective covenants.

#### **II. AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim for which relief may be granted.
2. Plaintiffs' claims are barred by laches.

3. Plaintiffs' claims are barred by the limitations on actions to recover real property set out in AS 09.10.030.

4. Plaintiffs' claims are barred by their unclean hands in that they have themselves encroached on the Hall property.

5. Plaintiffs' claims are barred by their unclean hands in that the buildings constructed on the Collins property violate the one cabin per lot limitation contained in the protective covenants and the location of their buildings does not meet the setback requirements contained in the protective covenants.

6. Plaintiffs' claims are barred by their unclean hands in that their outhouse does not comply with the requirements for sewage disposal contained in the protective covenants.

### **III. COUNTERCLAIM**

#### **A. Adverse possession**

1. Defendants own and possess the land described as the Hall property.

2. Defendants originally acquired title to the Hall property by deed dated July 15, 1994 and recorded July 18, 1994 in Book 409 at Page 767, a true and correct copy of which is attached to the Complaint as Exhibit 3. They subsequently conveyed the parcel to their trust by deed dated March 14, 2005 and recorded March 14, 2005 at Serial No. 2005-001967-0, a true and correct copy of which is attached to the Complaint as Exhibit 4.

3. At the time Defendants acquired the Hall property in 1994, the outhouse occupied its present location and it has not been moved since that time. Defendants have had actual, open, notorious, continuous, exclusive and uninterrupted possession of the outhouse and the area between their cabin and the outhouse for that entire period. Defendants had the good faith belief that the outhouse lay within the boundaries of the Hall property, which is adjacent to the Collins property. Since July 15, 1994, Defendants have treated the outhouse the area between their cabin and the outhouse as their property without the permission of any other person and under the color of title granted by the deed dated July 15, 1994.

4. Defendants are therefore entitled to ownership of the real property consisting of the outhouse and the area between their cabin and the outhouse.

**B. Declaratory Judgment regarding boundary lines**

5. In the fall of 2012, Defendants engaged Mark Johnson, a licensed surveyor from R & M Engineering, Inc., to survey the Hall property .

6. Mr. Johnson established the boundaries of the Hall property, including a boundary line between the Hall property and the Collins property, as shown on the Record of Survey (Exhibit 5 to the Complaint).

7. The Record of Survey shows that the structures on the Hall property do not encroach on the Collins property.

8. The Record of Survey was filed as Plat No. 2012-32R on December 7, 2012.



9. The boundaries established in the Record of Survey are not consistent with the boundaries suggested by the survey monuments placed by Mr. Bean on or about July 2009.

10. Mr. Bean prepared the Colt Island Alaska Recreational Development plat filed as Plat No. 75-11 (“Plat No. 75-11”).

11. Plat No. 75-11 was a paper plat, and was not confirmed by any monuments established by Mr. Bean on the ground at the time the plat was recorded. Plat No. 75-11 was not approved by any platting authority and contains at least one error, in that the distance shown between two points on the plat does not correspond to the size of the lots and rights of way proposed for inclusion within those points. The error occurs in a line along the westerly edge of Lots 10 through 18 in Area 1. Plat No. 75-11 describes the measured distance along that line as 947.76 feet, but the size of the individual lots, rights of way, and other distances proposed by Mr. Bean along that same line add up to 957.26 feet.

12. The boundaries established in the 2012 Record of Survey address and correct this error. The Record of Survey accurately describes the true location of the Hall property and the Collins property and the boundaries between those two parcels.

13. Defendants are therefore entitled to a declaratory judgment that the Record of Survey filed as Plat No. 2012-32R correctly sets forth the boundary lines of the Hall property and the Collins property.

### **C. Declaratory Judgment regarding Set-Back Requirements**

14. The lot owners on Colt Island have not consistently relied on accurate survey information in constructing improvements on their property.

15. The uncertainty regarding the proper boundaries between lots in the Colt Island Alaska Recreational Development has resulted in inconsistent compliance with the set-back requirements in the protective covenants.

16. It would be inequitable and constitute economic waste to force Defendants to comply with set-back requirements that are not enforced uniformly and that arise from good faith uncertainty about the location of boundaries.

17. Defendants are therefore entitled to a declaratory judgment that the structures presently located on the Hall property do not violate the protective covenants.

### **D. Declaratory Judgment regarding Protective Covenants**

18. There has been inconsistent compliance among the lot owners in the Colt Island Alaska Recreational Development with the requirements for sewage disposal in the protective covenants.

19. It would be inequitable and constitute economic waste to force Defendants to comply with sewage disposal requirements that are not enforced uniformly and that are not consistently followed by the lot owners in the Colt Island Alaska Recreational Development.

20. Defendants are therefore entitled to a declaratory judgment that the location and operation of their outhouse does not violate the protective covenants.

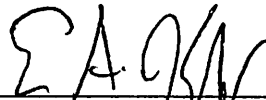
**PRAYER FOR RELIEF**

Wherefore, Defendant prays for the following relief:

1. An order dismissing the complaint in this action.
2. An order granting them title to the real property underlying their outhouse and the area between their cabin and the outhouse.
3. A declaratory judgment that the boundary lines established by the Record of Survey correctly set forth the boundary lines of the Hall property.
4. A declaratory judgment that the structures on the Hall property do not violate the set-back requirements in the protective covenants. .
5. A declaratory judgment that Hall's use and operation of their outhouse does not violate the protective covenants.
6. An award to Defendant of its costs, prejudgment interest, reasonable attorney's fees, and expert witness fees as provided by law or equity.
7. Such other relief as the court may deem just and proper.

DATED this 21st day of August, 2014

**FAULKNER BANFIELD, P.C.**



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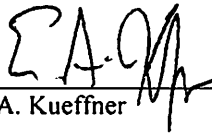
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8420 Airport Boulevard, Suite 101  
Juneau, Alaska 99801-6924

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21<sup>st</sup> day of August 2014, the undersigned caused a copy of the foregoing to be sent by U.S. mail, postage pre-paid, to:

Dan Bruce  
Baxter Bruce & Sullivan  
P.O. Box 32819  
Juneau, Alaska 99803

  
Eric A. Kueffner

24667

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