

**Arapahoe County District Court
7325 South Potomac Street
Centennial Colorado 80112
Telephone: 303-649-6355**

**Plaintiff: HIGHLINE MEADOWS
CONDOMINIUM ASSOCIATION,
INC.**

**Defendants: J AND S INVESTMENTS,
LLC d/b/a/ J AND S Investments, LLC,
d/b/a/ J & S Investment and JoAnn
Reberg**

**Attorney For Defendant:
Craig Franklin Chambers, Attorney At
Law
7874 W. Friend Drive
Littleton, CO 80128
(303) 972-2552
Registration No. 28018**

▲ COURT USE ONLY ▲

Case Number: 07 CV 2392

Ctrm:

AMENDED COUNTERCLAIMS

Comes Now Defendants, J and S Investments and JoAnn Reberg, by and through their attorney, Craig Chambers and submit their amended Counterclaims as follows:

A. ANSWER TO COMPLAINT

Defendants sets forth their Answer and Affirmative Defenses as originally set forth in their Answer, dated January 7, 2008, herein incorporated by this reference as if fully set forth.

B. COUNTERCLAIMS

1. J&S is the owner of a condominium known as 130 E. Highline Circle #308, Centennial, CO 80122 ("The Property") which is situated in Arapahoe County, State of Colorado (more particularly described as Unit 308, Building 130, as per Condo Declarations recorded at Book 2873, Page 367, Highline Meadows Condominiums).
2. JoAnn Reberg has a security interest of \$110,000 by virtue of a promissory note in The Property.
3. By virtue of Defendant J and S's ("Defendant") real property ownership as set forth above, Defendant is a member of The Highline Meadows Condominium

Association ("The Association"), a Colorado Non-Profit Corporation.

4. Defendant purchased The Property in August, 2006, and J&S's owner, Rich Reberg, resides in The Property.
5. The Association is bound by its 1978 "Condominium Declaration—Highline Meadows Condominiums" ("Declaration") and other governing documents.
6. The Association, through its Board of Directors, is a fiduciary to Defendant. The Association is required to enforce the Declaration, covenants, rules, regulations, and other governing documents.
7. Shortly after purchasing The Property, Defendant and the Association had a dispute as to the apportionment and amount of the monthly assessments for The Property, that The Association failed to uniformly follow and enforce its own rules or applicable Colorado law in its governing of The Association, and that The Association failed to maintain the common elements including the roof over The Property, resulting in substantial and severe water intrusion and damage to The Property.
8. As a result of this dispute, Defendant has failed to pay some of the monthly assessments claimed owed by The Association.
9. Plaintiff is required to maintain the common elements of the condominium project including the common elements and roofs as set forth in the Declaration and governing documents.
9. Plaintiff has failed or refused to maintain and repair these common elements, causing serious problems from water intrusion from the leaky roof with The Property, including, without limitation, water damage, mold, exposure to asbestos, problems with the ceilings and the entire interior of The Property, and problems with the balcony, substantially affecting Defendant's use and enjoyment of The Property, and resulting in the substantial, if not total, diminution of the value of The Property.
10. Plaintiff has been notified that The Property has been and continues to be damaged by Plaintiff's failure to maintain common elements; Plaintiff nonetheless refuses to maintain or repair the common elements or to repair the damages to The Property caused by its refusal to maintain or repair the common elements.
11. In May, 2007, Defendant had a ready, willing and able buyer to purchase The Property.
12. In June, 2007, the Buyer terminated the sale because Plaintiff failed in its obligation to make necessary repairs to the leaking roof, balcony, and other

common elements.

13. Defendant would have realized a gross profit of approximately \$17,000 had the sale closed.
14. Plaintiff has violated its fiduciary duty to Defendant and has acted arbitrarily and capriciously by failing to maintain the common elements, including, without limitation, to repair Defendant's balcony and the leaking roof over The Property, failing to repair the damages to The Property caused by Plaintiff, by mismanaging the money it receives from assessments, and by failing to apply the money it receives to routine maintenance or capital improvements.
15. Defendant has been damaged by the conduct of The Association, and Plaintiff is the cause and proximate cause of Defendants' damages.
16. In its attempts to collect assessments, Plaintiff, through collection agents, attempted to collect inflated, unauthorized, unearned, and unreasonable attorneys fees which were not owed by Defendant, attempted to collect attorneys fees without providing Defendant notice and opportunity for a hearing to challenge the validity and amount of the attorneys fees charged, attempted to charge and collect litigation attorneys fees when the Association had not been determined to be the prevailing party in violation of Colorado law, attempted to collect attorneys fees which have not been incurred, which are unreasonable, and which were never actually paid by The Association, attempted to collect a judgment that had been paid and satisfied, and attempted to collect special assessments, late fees and tracking fees which Plaintiff knew or should have known were invalid and were not owed by Defendant.
17. The Association was required to make written policies for disputes between the Association and the homeowners, to establish notice and hearing policies, to establish written policies and procedures for enforcement of policy and procedures, to establish valid written policies and procedures for collections policy and procedures, and to uniformly and fairly enforce the covenants, rules and regulations.
18. C.R.S. 38-33.3-209.5 states that The Association "shall adopt policies, procedures, and rules and regulations concerning the collection of unpaid assessments (C.R.S. 38-33.3-209.5 (b)(I), enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines (C.R.S. 38-33.3-209.5 (b)(IV), and procedures for addressing disputes between the association and unit owners (C.R.S. 38-33.3-209.5 (b)(VIII).
19. Plaintiff has not established or enforced the mandatory notice and hearing procedures required by C.R.S. 38-33.3-209.5. Without the mandatory hearing procedures in place or being enforced, Defendant had no recourse to dispute or challenge the attorneys fees alleged.

20. The Association has failed to make or enforce meaningful written dispute resolution written policies and has failed to uniformly and fairly enforce the covenants, rules, and regulations as set forth above as required by law
21. C.R.S. 38-3.3-123 states that attorneys fees are awarded to the prevailing party to enforce or defendant the covenants. C.R.S. 38-33.3-123(1)(c)
22. Plaintiff is wrongfully attempting to assess its inflated litigation fees or other fees Defendant doesn't owe against Defendant prior to being the prevailing party in litigation.
23. Plaintiff has violated its fiduciary duty to Defendant and has acted arbitrarily and capriciously by failing to make or enforce meaningful written dispute resolution written policies, by selectively enforcing its rules and by failing to uniformly and fairly enforce the covenants, rules and regulations, and by engaging in unauthorized collection policies and procedures as set forth above.
24. Defendant has been damaged by the conduct of The Association, and Plaintiff is the cause and proximate cause of Defendants' damages.

**1st Counterclaim--Violation of C.R.S. 38-33.3-101 *et seq*
(Colorado Common Interest Ownership Act)**

25. Defendant incorporates Paragraphs 1-24 above.
26. Plaintiff is in violation of the Colorado Common Interest Ownership Act by, without limitation, the conduct set forth above.
27. Defendant has been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendants' damages.

2nd Counterclaim--Violation of Declaration and Governing Documents

28. Defendant incorporates Paragraphs 1-28.
29. Plaintiff is in violation of its Homeowner's Association Declaration and governing documents by, without limitation, the conduct set forth above.
30. Defendant has been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendants' damages.

3rd Counterclaim--Breach of Fiduciary Duty

31. Defendant herein incorporates Paragraphs 1-32 by this reference.

32. Plaintiff was acting as a fiduciary for Defendant with respect to the establishment and enforcement of The Associations declaration, covenants, policies, and procedures.
33. Plaintiff breached that duty by, without limitation, its conduct as set forth above.
34. Defendant has been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendant's damages.

4th Counterclaim—Negligence

35. Defendants incorporate paragraphs 1-34 above.
36. Plaintiff owed a duty to Plaintiffs and Plaintiff's breached that duty by, without limitation, the conduct set forth above.
37. Plaintiffs' have been damaged by the conduct of Defendants, and Defendants are the cause and proximate cause of Plaintiffs' damages.

5th Claim For Relief--Private Nuisance

38. Defendants incorporate paragraph 1-37 above.
39. By their conduct above, Defendants have substantially and unreasonably interfered with Defendants' use, value, and enjoyment of Defendants' right to use his property.
40. Defendants interference with Plaintiff's use and enjoyment of Plaintiffs property is so substantial in nature that it would be offensive or cause inconvenience or annoyance to a reasonable person in similar circumstances.
41. Defendants have been damaged by the conduct of Plaintiffs, and Plaintiffs are the cause and proximate cause of Defendant's damages.

6th Claim For Relief--Trespass to Land

42. Defendants incorporate paragraphs 1-41 above.
43. Plaintiff caused rain water and snow melt to physically intrude upon Defendant's real property as set forth above.
44. These acts of physical intrusion were made or were caused to be made by Plaintiff without permission of Defendant who is lawfully entitled to the possession of the real property.

45. Defendants have been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Plaintiffs damages.

7th Counterclaim--Fraudulent Misrepresentation

46. Defendant herein incorporates Paragraphs 1-45 by this reference.

47. Plaintiff made fraudulent misrepresentations to Defendant and to the court regarding the nature, character, and amount of the monies allegedly owed to The Association by Defendant stated in particularity as follows:

In its attempts to collect assessments, Plaintiff, through collection agents and attorneys, acting in the scope of employment, attempted to collect inflated, unauthorized, unearned, and unreasonable attorneys fees which were not owed by Plaintiff, attempted to collect attorneys fees without providing Defendant notice and opportunity for a hearing to challenge the validity and amount of the attorneys fees charged, attempted to charge and collect litigation attorneys fees when the Association had not been determined to be the prevailing party in violation of Colorado law, attempted to collect attorneys fees which have not been incurred, which are unreasonable, and which were never actually paid by The Association, attempted to collect a judgment that had been paid and satisfied, and attempted to collect special assessments, late fees and tracking fees which Plaintiff knew or should have known were invalid and were not owed by Plaintiff.

48. Defendant relied on the misrepresentation.

49. Defendant had the right to rely on or were justified in relying on the misrepresentation.

50. Defendant's reliance resulted in damages.

51. Defendant has been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendant's damages.

7th Counterclaim--Repair or for Set-Off Due to Loss of Sale.

52. Defendant herein incorporates Paragraphs 1-51 by this reference.

53. Plaintiff had a duty to Defendant which Plaintiff breached, resulting in the loss of sale of The Property to a third party and damages to Defendant.

53. Defendant is entitled to a set-off and to loss of profits and damages due to the loss of sale caused by Plaintiff.

54. Defendant has been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendant's damages.

8th Counterclaim--Abuse of process

55. Defendants herein incorporates Paragraphs 1-54 by this reference.

56. Plaintiff mis-used the judicial process for an ulterior purpose as set forth by misrepresenting the amount fo attorneys fees owed by Defendant to the Arapahoe County and District court and by trying to collect special assessments that were invalid, and by trying to collect judgment that had been paid as set forth above.

57. This was a willful action in the use of the judicial process which is not proper in the regular course of the proceedings, that is, use of a legal proceeding in an improper manner.

58. Defendants have been damaged by the conduct of Plaintiff, and Plaintiff is the cause and proximate cause of Defendants' damages.

59. To the best of Defendant's knowledge, Plaintiff is not engaged in the military services of the United States and is engaged in civilian occupations.

60. Defendant respectfully requests this matter be tried by a properly impaneled jury of six.

PRAYER FOR RELIEF

WHEREFORE, Defendants having fully answered the complaint, and having set forth their affirmative defenses and counterclaims, respectfully requests the following relief:

- a. That Plaintiff's complaint be dismissed with prejudice
- b. For a Judgment in favor of Defendant and against Plaintiff for compensatory damages including but not limited to compensatory and special damages in an amount to be determined at trial for reasonable repair costs to The Property, for diminution of the property value of The Property, or for an award of damages for the total loss of the value of The Property.
- c. Award to Defendant damages for annoyance and discomfort for their private nuisance claim and trespass claim, for diminution of the value of The Property and for the loss of use and enjoyment of The Property;
- d. For an award of damages to Defendant for a set-off for the lost profits and loss of sale of The Property as set forth above.
- e. For a Judgment in favor of Defendant and against Plaintiff for compensatory,

special, emotional distress, and actual damages incurred by Defendant in amount to be determined at trial and for a reasonable amount to compensate Defendant for Plaintiff's tortious conduct, violation of statute and governing documents, fraudulent misrepresentation, abuse of process, and breach of fiduciary duty.

- f. For reimbursement for costs and attorneys fees for defending this action and for prosecuting these counterclaims in accordance with Colorado law.
- g. Award to Plaintiff all interest as allowed under Colorado law
- h. For such further relief as this Court deems just and proper.

Dated: December 9, 2009

Respectfully Submitted,

CRAIG FRANKLIN CHAMBERS, ATTORNEY AT LAW

By _____
/s/Craig Franklin Chambers

Craig Franklin Chambers Registration #28018
7874 W. Friend Drive Littleton, CO 80128
(303) 972-2552

Original Signature on File at the Law Office of Craig Franklin Chambers