

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

CREST A.E.R.O., Inc., a Washington Nonprofit corporation, as agent for Flying Acres real property owners; JEFFREY M. MONTGOMERY, in his individual capacity and as representative of the Class Action for Flying Acres; DAVID G. LEHMAN, in his individual capacity and as representative of the Class Action for Flying Acres; and THE FLYING ACRES CLASS.

Plaintiffs,

vs.

CREST AIRPARK, INC., a Washington corporation, Norman C. Grier and Jane Doe Grier and the marital community comprised thereof, GRIER FAMILY HOLDINGS L.L.C., a Washington Limited Liability Company, All unknown heirs of Norman C. Grier and Jane Doe Grier, and All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, tenancy or Interest in the Property Described in the Complaint Herein,

Defendants.

No. 01-2-33022-5 KNT

AMENDED COMPLAINT FOR

- (1) Class Action;**
- (2) Declaratory Action;**
- (3) Quiet Title;**
- (4) Ejectment;**
- (5) Permanent Injunction;**
- (6) Establishment of Common Fund; and**
- (7) Damages**

COMES NOW the plaintiffs and for cause of action states and alleges as follows:

I. PARTIES AND JURISDICTION

- 1.1 CREST A.E.R.O., Inc., is a nonprofit Washington Corporation established on November 6, 1992. Ex. 1 All fees and licenses have been paid and up to date.
- 1.2 JEFFREY M. MONTGOMERY is a resident of King County and a single person suing in his individual capacity and as representative of the Class Action for Flying Acres.
- 1.3 DAVID G. LEHMAN, is a resident of King County and a single person suing in his individual capacity and as representative of the Class Action for Flying Acres.
- 1.4 The FLYING ACRES CLASS consists of similarly situated real property owners generally referred to in an easement attached hereto and incorporated herein as Exhibit 2, under King County recording number 7512160233 on December 12, 1975. The respective legal descriptions are contained in Exhibit 2 and a list of the real property owners is attached as Exhibit 5.
- 1.5 Based on information and belief, CREST AIRPARK, INC. is a Washington corporation formed on January 15, 1993 under UBI number 601440500 (Exhibit 3) and is believed to own and/or control real property interests that may be affected by this lawsuit and the easement referenced in paragraph 1.4. Norman C. Grier is the registered agent for the corporation whose address is 29300 179th Pl. SE, Kent, WA 98042.
- 1.6 Based on information and belief, GRIER FAMILY HOLDINGS L.L.C. is a limited liability company organized under Washington State law formed on April 19, 1999 under UBI number 601 948 128 and is believed to own and/or control real property interest that may be affected by this lawsuit and the easement referenced in paragraph 1.4. Rikki Birge is the registered agent for the L.L.C. whose address is 29300 179th Pl. S.E., Kent, WA 98042.
- 1.7 Based on information and belief, Norman C. Grier and Jane Doe Grier, and the marital community comprised thereof are believed to own and/or control real property interests that may be affected by this lawsuit and the easement referenced in paragraph 1.4. Exhibit 4.
- 1.8 Plaintiffs do not know the true names of defendants All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, tenancy or Interest in the Property Described in the Complaint Herein and therefore sues them by fictitious names. The names, capacities, and

relationships of defendants sued under fictitious names will be alleged by amendment to this complaint when the same are known

1.9 It is the intent of the plaintiffs to identify all parties and entities as required under RCW 4.28.150, RCW 4.28.130, RCW 7.28.010 and all persons unknown who may have or claim any interest RCW 4.28.150. Therefore, this complaint may need to be amended as discovery may identify other entities entitled to service and notice hereof.

1.10 The above-entitled Court has proper jurisdiction and venue pursuant to RCW 7.28.010 over the subject matter of and parties to this action because the real estate at issue is located in King County and the defendant parties are residents of King County, Washington.

II. STATEMENT OF FACTS

2.1 On or about December 11, 1975, Stanley N. Nesland and Virginia S. Nesland as owner of real property legally described in Exhibit 2 attached hereto and incorporated herein, created an easement to benefit numerous real property owners. Hereinafter, the benefited real property owners will be collectively referred to herein as “The Flying Acres Class.”

2.2 “The Flying Acres Class” of property owners consist of approximately 114 individual lot owners that own real property in the following Plats:

Flying Acres recorded in Vol. 92, Plats, pages 83 and 84;

Flying Acres #2 - recorded in Vol. 87, Plats, pages 94, 95 and 96;

Flying Acres # 3 - recorded in Vol. 98, Plats, pages 99 and 100;

Proposed Plat of Flying Acres # 4 - recorded in Vol. 99, Plats, pages 22 and 23 all in King County, Washington

Exhibit 2

2.3 Based on information and belief, attached hereto and incorporated herein, is a list of the 114 real property owners that comprise “The Flying Acres Class” of litigants whom own parcels of property referred to in the easement and described in paragraph 2.2 supra.

2.4 Subsequent to December 16, 1975, The Flying Acres Class started utilizing the easement for the

purpose of accessing and utilizing the adjoining property as an “airport” i.e. accessing the runway from their respective parcels for both take-offs and landings, landing aircraft not only on the paved runway but also on grass areas in certain circumstances. The Flying Acres Class has openly and continuously used property described in Exhibit 2, even through the date of the filing of this action.

2.5 Subsequent to December 16, 1975, the Neslands conveyed their legal interests in the real estate described in Exhibit 2 to other parties and currently defendant CREST AIRPARK, INC. and/or Defendant NORMAN C. GRIER AND JANE DOE GRIER own real property legally described in Exhibit 2.

2.6 The easement in Exhibit 2 grants THE FLYING ACRES CLASS the following rights and contains the following language:

...the right to use the airplane landing strip and taxiways of the Crest Airpark Airport located on the following described real property: SEE EXHIBIT A ATTACHED HERETO until December 31, 2000, for the purpose of landing and taking off small private aircraft.

Property Owners shall have the option to extend this agreement for an additional 25 years to December 31, 2025, under the following conditions:

1. That at least 60% of the then property owners agree to pay 50% of the cost of maintenance of the landing strip and taxiways and 50% of the taxes assessed or attributable to the landing strip and taxiways.
2. During the extended period from January 1, 2001 to December 31, 2024, any Property Owner not contributing his share of the maintenance and taxes shall not have the right to use the landing strip and taxiways.
3. ‘The right to use the landing strip and taxiways may be terminated during the extended period from January 1, 2001 to December 31, 2025 by agreement of 2/3 of the Property Owners.

The rights granted herein shall not prevent the Airport Owner from using the aircraft tiedown areas or from construction of buildings so long as the use of the runways and adjoining taxiways are not impaired.

The right herein granted may be terminated at any time prior to December 31, 2000 by agreement of 100% of the Property Owners.

This agreement shall be binding upon the heirs and assigns of the parties and shall run with the land.

2.7 In light of the “extension” language contained in Exhibit 2, some of the members of THE FLYING ACRES CLASS formed CREST A.E.R.O., Inc., a Washington nonprofit corporation on November 6, 1992 to act as a collective representative on behalf of at least 60% of the property owners

described in Exhibit 2 in order to obtain the finances and legal commitment of the requisite property owners in order to exercise the option to extend the easement beyond December 31, 2000.

2.8 CREST A.E.R.O., Inc. has Articles of Incorporation and Bylaws which specifically state that the corporation's purpose, among other things, is "to represent members of the Corporation in all matters pertaining to their use of the runway and taxiways of Crest Airport" and "to fix, levy, collect and enforce payment, by any lawful means, all charges and assessments made in accordance with its Bylaws."

2.9 In order for a property owner to become a Member of CREST A.E.R.O., Inc., a property owner only needs to agree to sign up to belong to the corporation and pay their dues.

2.10 However, a property owner may also voluntarily sign an "Agency Appointment" agreement with the corporation and also have the corporation represent that property owner concerning the easement. Attached hereto and incorporated herein are 3 samples of an Agency Appointment. Exhibit 6.

2.11 The Defendants have been aware of the existence of CREST A.E.R.O., Inc. since the corporation's inception, have known of its purpose and have met with the various representative of CREST A.E.R.O., Inc. to discuss the easement, option, maintenance and tax issues.

2.12 In December of 1999, CREST A.E.R.O., Inc., President Jeffrey Montgomery, corporate officer Janet Gundlach, corporate officer Tom Torchia, Defendant Norman C. Grier and Mr. Grier's daughter and airport manager Rikki Birge, met at Shari's restaurant to discuss how THE FLYING ACRES CLASS would exercise the option, how THE FLYING ACRES CLASS would collect funds and how those members of THE FLYING ACRES CLASS would pay money to exercise the option.

2.13 At the time of the meeting in December 1999, more than 60% of THE FLYING ACRES CLASS had signed Agency Appointment Agreements similar to Exhibit 6, the representative of CREST A.E.R.O. informed the defendants of this fact and informed the defendants that THE FLYING ACRES CLASS was exercising the option to extend the easement beyond December 31, 2000.

2.14 Numerous subsequent meetings took place between the parties. The defendants provided data to THE FLYING ACRES CLASS which could be used to estimate maintenance and taxes for

2001.

2.15 The parties agreed on a process to test the system of collection. In reliance on the meetings and the information provided by the Defendants, CREST A.E.R.O. sent out billing statements to those members that signed the Agency Appointments and placed the money received into a trust account that is/was monitored by a Public Accounting Firm.

2.16 In reliance on the meetings and the information provided by the Defendants, THE FLYING ACRES CLASS, CREST A.E.R.O., Inc. on behalf of its members and the Defendants jointly installed a new power meter in the airport office to separate out the electrical for the runway lights and rotating beacon. Mr. Grier even called Jeffrey Montgomery over to the airport office to monitor the installation of the power meter.

2.17 However, starting in March of 2000, the Defendants stopped cooperating with CREST A.E.R.O. and THE FLYING ACRES CLASS. The Defendants refused to provide the actual data necessary for THE FLYING ACRES CLASS to pay its respective “50% share” of maintenance and taxes in accordance with the easement in Exhibit 2.

2.18 On repeated occasions, the Plaintiffs have requested the financial information necessary to comply with the easement in Exhibit 2 and have informed the Defendants that the Plaintiffs were exercising the option to extend the easement to December 31, 2025. However, the Defendants have failed to provide the financial information.

2.19 At the Christmas party at Mr. Grier’s house in December 2000, Mr. Montgomery discussed with Mr. Grier the need to finish some of details in writing before the end of the year (2000) as to the methods that were agreed to in principle in December of 1999. Mr. Grier indicated that he “wanted to deal with it in January after the holidays.”

2.20 In spite of Mr. Grier wanting to wait till after December 31, 2000 to further discuss the exercise of the easement, the maintenance and the taxes, the Plaintiffs sent the enclosed “Letter of Understanding” to the Defendants on December 15, 2000; however, the Defendants refused to sign the letter. Exhibit 7

2.21 In spite of the lack of actual financial information from the Defendants, the Plaintiffs made a substantial good faith effort to estimate the Plaintiffs’ “50% share” of maintenance and taxes.

Therefore, on December 28, 2000, the Plaintiffs delivered a letter dated December 28, 2000 along with a check in the sum of \$3,000 as THE FLYING ACRES CLASS' estimated share of maintenance and taxes for the first calendar quarter of the year 2001. Exhibit 8

2.22 THE FLYING ACRES CLASS has made additional estimated payment to the defendants; however, the Defendants have returned the payments. Exhibit 9

2.23 THE FLYING ACRES CLASS has made additional requests for financial records from the defendants; however, the Defendants have failed to provide any actual financial records.

2.24 The Defendants have informed the Plaintiffs that the Defendants do not believe the Easement in Exhibit 2 was ever exercised and the Defendants now claim that the Plaintiffs do not have a right to use the airport in the same manner that THE FLYING ACRES CLASS has utilized the airport since 1975.

2.25 The easement in Exhibit 2 (and maintenance thereof in conformance with FAA standards) is essential to the real property values and quiet enjoyment of THE FLYING ACRES CLASS. Any interruption and/or change to the use of the easement since 1975 will create substantial financial damages to THE FLYING ACRES CLASS.

2.26 Therefore, in order to protect the Plaintiffs' property rights and legal interests, the Court must grant the relief requested herein.

2.27 JEFFREY M. MONTGOMERY is the legal owner of Lot 3-11 in Flying Acres Division 3, Recorded in Vol. 98 of Plats, pages 99 and 100, situate in the County of King, State of Washington.

2.28 DAVID G. LEHMAN is the legal owner of Lot 3-15 in Flying Acres Division 3, Recorded in Vol. 98 of Plats, pages 99 and 100, situate in the County of King, State of Washington.

2.29 Mr. Montgomery and Mr. Lehman members of THE FLYING ACRES CLASS and are similarly situated to the class members in that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

2.30 Subsequent to the filing of this lawsuit, a Motion for Certification of the Class pursuant to CR 23 will be filed.

III. CAUSES OF ACTION

3.1 CLASS ACTION: Pursuant to CR 23 one or more members of a class may sue or be sued as representative parties on behalf of all as follows in relevant part:

- (a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
- (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:
 - (1) The prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or
 - (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
 - (3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

In the case at bar, the named litigants satisfy the requisite elements for filing and maintaining this matter as a class action lawsuit.

3.2 DECLARATORY ACTION: RCW 7.24.020 A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations there under. Pursuant to RCW 7.24.030 A contract may be construed either before or after there has been a breach thereof.

3.3 QUIET TITLE: Pursuant to RCW §7.28.010, plaintiffs are entitled to bring this action against any person claiming the title or some interest in the said property, against unknown heirs of a person known to be dead, or against unknown heirs of any person where it is not known whether such person is dead or not, and title to the said property should be quieted in the plaintiff concerning all claims of title, estate, lien, or interest in the said property to have judgment entered establishing an easement for ingress, egress and defining “50% of the cost of maintenance of the landing strip and taxiways and 50% of the taxes assessed or attributable to the landing strip and taxiways.

3.4 IMPLIED USE: Plaintiffs reallege each and every fact contained in Section 1 and 2 above. Based on those facts, the easement should be established based on the doctrine of implied use because the use of the area was implied from prior use during unity of title, continued to exist after severance of title and there is reasonable necessity for the easement to exist.

3.5 PRESCRIPTIVE USE: Plaintiffs reallege each and every fact contained in Section 1 and 2 above. Based on those fact, the easement should be established based on the doctrine of prescriptive easement because the use of the property was adverse to the title owner; the use was open, notorious, continuous and uninterrupted for 10 years and the owners of the subject property knew of the adverse use when they were able to enforce their rights.

3.6 EJECTMENT Pursuant to RCW §7.28.010, plaintiffs are entitled to a judgment against defendants jointly and severally for ejectment for interference with plaintiffs use and enjoyment of the easement.

3.7 PERMANENT INJUNCTION. Plaintiffs are entitled to a permanent injunction against the defendants to prevent encroachment and interference with the right of use created in the easement holder.

3.8 ESTABLISHMENT OF COMMON FUND. Plaintiffs seek to have a specific monetary common fund established by the Court for the benefit of the Flying Acres Class pursuant to *Covell v. Seattle*, 127 Wn.2d 874, 905 P.2d 324 (1995), *Miotke v. City of Spokane*, 101 Wn.2d 307, 339, 678 P.2d 803 (1984) and other case law. The specific monetary fund to be created is a common account to which defendants must pay funds to ensure the payment of real property taxes. Under State Statute, if a real property owner does not timely pay their real estate taxes, the government is entitled to foreclose the property. To prevent the Flying Acres Class from being damaged by the Defendants failing to pay real property taxes, a common fund should be established by the Court.

IV. DAMAGES AND RELIEF REQUESTED

WHEREFORE plaintiffs pray the Court for relief against the defendants jointly and severally as follows:

- 4.1 For title to the affected parcels of property to be quieted; for establishment of an easement for ingress, egress and defining “50% of the cost of maintenance of the landing strip and taxiways and 50% of the taxes assessed or attributable to the landing strip and taxiways for the benefit of the Plaintiffs and the plaintiffs heirs, successors and assigns;
- 4.2 For establishment of a common specific monetary fund/account to which defendants must pay funds to ensure the payment of real property taxes;

- 4.3 For judgment ejecting the defendants, their personal property and their encroachments of all matter and type from the easement established;
- 4.4 For a permanent injunction against the defendants to prevent encroachment and interference with the right of use created in the easement holder (plaintiffs);
- 4.4 For damages pursuant to RCW 7.28.150 if an encroachment is created by defendants;
- 4.5 For costs and reasonable attorney's fee pursuant to the exception to the American Rule for Attorney fees for establishment of a "common fund", and
- 4.6 For such other and further relief as this Court may deem just and equitable.
- 4.7 That plaintiff be awarded interest on the grand total of the judgment at the maximum allowable rate from the date of judgment herein until judgment is satisfied; and

DATED this 18th day of October, 2002.

Law Offices of Christopher Benson

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Attorneys for Plaintiffs