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TELEPHONE 3711

August 16, 1949

Copy

Mr. Herbert M. Kearns, President,
Odd Fellows Sierra Recreation Association,
739 East Lindsey Street,
Stockton, California.

Re: Odd Fellows Sierra Camp Subdivision.

Dear Mr. Kearns:

Gene Bianchi phoned me this morning, advising you had gotten word in some way that a suit had been filed, involving the property purchased from Mrs. Hawley.

I immediately phoned the County Clerk's office in Stockton, and found that this is correct. An action was r filed on August 12, 1949, by James W. King, plaintiff, vs. Evelyn M. Hawley, G. W. Graves, John T. Ward, Odd Fellows Sierra Recreation Association, Lewis H. Bach, Marjory L. Coffill, Lynn L. Lawrence, Marguerite V. Lawrence, and various Does. The action is Action No. 46627 in the Superior Court of San Joaquin County.

In substance, the Complaint alleges that the plaintiff, King, is actually the owner of the property you purchased from Mrs. Hawley; that under the terms of the will of E. C. Sylvester, to whom the property originally belonged, such property was to go to Ida M. Graves, and that while she had the right to sell or dispose of it during her lifetime for her support and maintenance, anything left at her death, was, under the terms of the will, to go to King; that the decree of distribution in the Sylvester Estate, whereby Mrs. Graves got title to the property, attached the same condition to the property and to Mrs. Graves' title thereto, as was attached by the will, namely, that Mrs. Graves could sell or dispose of it only for her support and maintenance, and anything remaining at her death was to go to King; that the deeds to such property passing from Mrs. Graves to Mrs. Hawley, then from Mrs. Hawley back to Mrs. Graves, then from Mrs. Graves to John T. Ward, then from John T. Ward to Mrs. Hawley, were all made and executed without any consideration passing between the parties, and were made in an attempt to defeat King's rights to the property; that the property was not sold by Mrs. Graves for her comfort or support; and that all parties defendant, even including the Odd Fellows Association, took title with full knowledge and notice of these facts.

King's Complaint asks the Court to enter a decree that

King is actually the owner of the property, and that the claims of title of the other defendants, including the Odd Fellows, are invalid. The complaint also further states that the Court restrain Mrs. Hawley from further alienating the property and from alienating her note and trust deed from the Odd Fellows, and from alienating any of the proceeds thereof.

I also phoned the Recorder's office in Sonora, and found that King's Attorneys have recorded in Tuolumne County a Notice of the Pendency of this action. Such recording was made August 15, 1949.

Under these circumstances, until this action is disposed of or settled or compromised, it will be impossible for the Odd Fellows to give clear title to any of the lots in the subdivision - in fact, I feel sure that it will also be impossible to get the final approval of the Real Estate Commissioner to the subdivision until the action is disposed of or settled.

I have therefore phoned the title company at Sonora and have instructed them to withhold payment of the \$10,000.00 in escrow there until they receive further word from us, and I have confirmed this by letter to the Title Company. You can appreciate that, with a notice on the records there in Tuolumne County that King claims to own the property, we certainly are in no position to safely pay any further money to Mrs. Hawley.

I have also phoned Mrs. Hawley's Attorney, J. C. Webster, of Sonora, and have apprised him of this situation.

Only one course of action is now open to us - namely, to contact King's attorneys, Mazzera, Snyder and DeMartini, of Stockton, and see if some arrangements can be made with King and with Mrs. Hawley whereby they will agree to release the property and dismiss the Odd Fellows Association from the pending suit, and simply confine their fight to a fight over who is to receive the proceeds from the sale to the Odd Fellows. I frankly doubt whether we can get the parties to make such an agreement, but it is worth trying.

In any event, until the suit is resolved, or until we are ordered to do so by the Court, we will not have to make any further payments to anyone on this property, because obviously we don't know who to pay. Hence the suit is at least a temporary moratorium on our payments.

I think that if we have to fight the suit, the Court will

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Herbert M. Kearns

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decree that the Odd Fellows purchased the property in good faith and for value, and that they acquired a valid title, regardless of what the rights to the proceeds may be as between Mrs. Hawley and Mr. King. However, a suit of this kind can be delayed interminably, and it would be many months before we could possibly get it tried and determined.

Under present conditions, I think it unwise to contract for the sale of any further lots to purchasers, unless such purchasers are willing to put up a deposit with full understanding that there is no way of telling when they will finally get title. As to prospective purchasers who have already paid deposits on lots, we may have to refund their money, unless they are willing to let it ride on the outcome of the suit.

Before we do anything further, however, I want to sound out King's attorneys, and I will then again contact you and the other officers of the Association.

Yours very truly,

George H. Ackley
FOR BUSH & ACKLEY

GHA/LB

cc-Gene Bianchi
Loren W. Hosmer
J. C. Mundy,
Louis E. Florence.