

FILED

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02 FEB 13 AM 9:04

SUPERIOR COURT OF CALIF
COUNTY OF TUOLUMNE

7 Attorney for Plaintiff

CLERK *Cheryl J. Hunsinger*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF TUOLUMNE

10	ODD FELLOWS SIERRA RECREATION)	Case No. CV CV 48735
11	ASSN, INC.,)	
12)	COMPLAINT TO QUIET TITLE TO REAL
13	Plaintiff,)	PROPERTY
14	v.)	
15	MANUEL SOARES, JR., STATE OF)	
16	CALIFORNIA FRANCHISE TAX BOARD,)	
17	INTERNAL REVENUE SERVICE, ALL)	
18	PERSONS UNKNOWN, CLAIMING ANY)	
19	LEGAL OR EQUITABLE RIGHT, TITLE,)	
20	ESTATE, LIEN, OR INTEREST IN THE)	
21	PROPERTY DESCRIBED IN THE)	
22	COMPLAINT ADVERSE TO PLAINTIFF'S)	
23	TITLE, OR ANY CLOUD ON PLAINTIFF'S)	
24	TITLE THERETO, and DOES 1 - 100,)	
25)	
26	Defendants.)	

27 I.
28 INTRODUCTORY ALLEGATIONS

1. Plaintiff is the owner and is in possession of real property situated in Tuolumne County, California, described as follows:

Lot 59, Block 14, as designated and delineated on that certain Map or Plat entitled "I.O.O.F. ODD FELLOWS SIERRA CAMP, Subdivision No. 1", filed in the office of the County Recorder on March 8, 1950, in Volume 10 of Maps or Plats, at Pages 44 to 48 inclusive (hereafter "Odd Fellows Property"), also described as Assessors Parcel Number 31-081-26.

2. Venue is proper in the above entitled court pursuant to Code of Civil Procedure

COMPLAINT

1 Section 760.050 (a) because the property which is the subject of this action is located in
2 Tuolumne County.

3 3. Plaintiff purchased the Odd Fellows Property at a foreclosure sale on or about April 5,
4 1996, taking a Trustee's Deed Upon Sale, a true copy of which is attached hereto and
5 incorporated herein by reference as Exhibit A.

6 4. Plaintiff is informed and believes and thereon alleges that the last known address for
7 defendant Manuel Soares, Jr., was 21837 Cedar Springs Road, Twain Harte, Tuolumne County,
8 California. Defendant Manuel Soares was the previous owner whose interest in the property was
9 foreclosed at the trustee's sale which resulted in the Trustee's Deed Upon Sale.

10 5. Plaintiff is informed and believes and thereon alleges that defendant State of California
11 Franchise Tax Board claims some right, title, estate, lien or interest in the Odd Fellows Property
12 by virtue of a prior tax lien or otherwise and their claims, and each of them, constitute a cloud on
13 Plaintiff's title to that property.

14 6. Plaintiff is informed and believes and thereon alleges that defendant Internal Revenue
15 Service (hereafter "IRS") claims some right, title, estate, lien or interest in the Odd Fellows
16 Property by virtue of a prior tax lien against taxpayer, Manuel Soares, or otherwise and these
17 claims, and each of them, constitute a cloud on Plaintiff's title to that property. The San Jose
18 district office of IRS filed the lien in Tuolumne County, California, on August 2, 1995.

19 7. The Defendants herein named as "all persons unknown, claiming any legal or equitable
20 right, title, estate, lien or interest in the property described in the complaint adverse to Plaintiff's
21 title, or any cloud on Plaintiff's title thereto (hereinafter sometimes referred to as "the Unknown
22 Defendants") are unknown to Plaintiff. These Unknown Defendants, and each of them, claim
23 some right, title, estate, lien, or interest in the Odd Fellows Property adverse to Plaintiff's title;
24 and their claims, and each of them, constitute a cloud on Plaintiff's title to that property and
25 implied easement thereon. Plaintiff is ignorant of the true names and capacities of Defendants sued
26 herein as DOES 1 through 100, and therefore sues these Defendants by such fictitious names.
27 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
28 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named

1 Defendants claim some right, title, estate, lien, or interest in the hereinafter-described property
2 adverse to Plaintiff's title and their claims, and each of them, constitute a cloud on Plaintiff's title
3 to that property.

4 **II.**

5 **FIRST CAUSE OF ACTION**
6 **TO QUIET TITLE TO REAL PROPERTY**

7 8. Plaintiff realleges and incorporates by reference Paragraphs 1- 7 above as if set forth in
8 full herein.

9 9. Plaintiff is the sole owner of the fee simple title to the Odd Fellows Property.

10 10. Plaintiff acquired its title to the property by Trustee's Deed Upon Sale from Cimarron
11 Service Corporation, Trustee. The Trustee's Sale occurred on April 3, 1996. The trustee's deed
12 is dated on or about April 5, 1996, and was recorded on April 16, 1996.

13 11. Plaintiff is informed and believes and thereon alleges that at the time it obtained title
14 to the Odd Fellows Property, there were one or more federal or state tax liens against it.
15 Accordingly, the Trustee, Cimarron Service Corporation, provided written notice of the
16 foreclosure proceedings to the Internal Revenue Service on or about March 6, 1996, by certified
17 mail as required by Internal Revenue Code section 7425(c)(1). Plaintiff is informed and believes
18 that similar written notice was timely provided to the Franchise Tax Board.

19 12. Neither the Franchise Tax Board nor the Internal Revenue Service entered timely
20 objection to the foreclosure nor did either agency appear at, contest, or bid at the foreclosure sale.
21 Further, neither the Franchise Tax Board nor the Internal Revenue Service did anything to claim
22 or redeem their interest, if any they have, in the Odd Fellows Property after they received notice
23 of the Trustee's Sale and the recording of the Trustee's Deed Upon Sale which conveyed title to
24 the Odd Fellows Property to plaintiff.

25 13. Plaintiff is seeking to quiet title against the claims of Defendants as follows: The
26 claims of defendant, Manuel Soares, the prior owner from whom the property was foreclosed; the
27 lien claims of the State of California, Franchise Tax Board; the lien claims of the Internal Revenue
28 Service; and the claims of all unknown defendants described in Paragraph 7, whether or not the

1 claim or cloud is known to plaintiff. Plaintiff is informed and believes and thereon alleges that the
2 claims of all defendants are without any right whatever and such defendants have no right, title,
3 estate, lien, or interest whatever in the above-described property or any part thereof.

4 14. Plaintiff seeks to quiet title as of April 5, 1996, because that is the date on which
5 Plaintiff acquired title to the Odd Fellows Property.

6
7 **PRAYER**

8 WHEREFORE, Plaintiff prays judgment against Defendants as follows:


9 **ON THE FIRST CAUSE OF ACTION TO QUIET TITLE**

10 1. For a judgment quieting title to the Odd Fellows Property and declaring that defendants
11 have no interest in the property adverse to the Plaintiff;

12 2. For costs of suit herein incurred; and

13 3. For such other and further relief as the court may deem proper.

14 Dated: February 11, 2002

15 
16 ROGER A. BROWN
Attorney for Plaintiff

17 **VERIFICATION**
18 **STATE OF CALIFORNIA, COUNTY OF TUOLUMNE**

19 I have read the foregoing COMPLAINT and know its contents. I am PRESIDENT of
20 ODD FELLOWS SIERRA RECREATION ASSN, INC., a party to this action, and am authoriz-
21 ed to make this verification on its behalf, and I make this verification for that reason. The matters
22 stated in the foregoing document are true of my own knowledge except as to those matters which
23 are stated on information and belief, and as to those matters I believe them to be true.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Dated: February 7, 2002

27 
28 DELWYN H. WALLIS

RECORDING REQUESTED BY:

FIRST AMERICAN TITLE INSURANCE COMPANY

AFTER RECORDING RETURN TO:

ODD FELLOWS SIERRA RECREATION ASSN.
ATTN: William Zobel, President
P.O. Box 116
Long Barn, CA 95335

DOCUMENT # BOOK PAGE DOCUMENT #
005383 1387 0693
TUOLUMNE COUNTY OFFICIAL RECORDS

RECORDED AT THE REQUEST OF
FIRST AMERICAN TITLE INS CO

APR 16, 1996 8:51:12 AM
DAVID W WYNN, RECORDER.
OF PAGES: 2
FEE REC'D : \$10.00

#35921-TSG

TRUSTEE'S DEED UPON SALE

FIRST AMERICAN TITLE INSURANCE COMPANY

RECORDING REQUESTED BY

ODD FELLOWS SIERRA RECREATION ASSN
Attn: William Zobel, President
P.O. BOX 116
Long Barn, Ca. 95335

THIS SPACE FOR RECORDER'S USE ONLY

Trustee Sale No#: 95-4771

Title Order #: 800693

Lien #: 1028 - 9536

1387/0694 END

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

A.P.N. 31-081-26

- 1) The Grantee herein was the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was... \$ 2,439.00
- 3) The amount paid by the grantee at the Trustee's Sale was... \$ 2,439.00
- 4) The Documentary Transfer Tax is..... \$ N/A
- 5) Said property is in the County of TOULUMNE, State of California
(X) Unincorporated area () City of:

and CIMARRON SERVICE CORPORATION

As the duly appointed Trustee referred to below and herein called TRUSTEE, does hereby grant and convey, but without warranty, expressed or implied to:

ODD FELLOWS SIERRA RECREATION ASSN, INC.

Herein called GRANTEE, all right, title and interest in and to that certain property situated in the County of TOULUMNE, State of California, described as follows:

LOT 59, Block 14, as designated and delineated on that certain Map or Plat entitled "I.O.O.F. ODD FELLOWS SIERRA CAMP, Subdivision No. 1", filed in the office of the County Recorder on March 8, 1950, in Volume 10 of Maps or Plats, at Pages 44 to 48 inclusive.

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Notice of Assessment Lien recorded as Instrument No. 2852 BK 1321 PG 613 on 03/08/95, Official Records of TOULUMNE County, California, (MANUEL SOARES purported record owner) and after fulfillment of the conditions specified in that certain document entitled COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs), recorded in the Official Records of said TOULUMNE County, authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell, which was recorded in the office of the Recorder of said County.

All requirements of law regarding the mailings of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of Sale have been complied with.

TRUSTEE in compliance with said Notice of Sale and in exercise of its power under the aforementioned CC&Rs, sold said real property at public auction on April 03, 1996, at the place named in the Notice of Sale, in the County in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said Trustee the amount bid being \$2,439.00, in lawful money of the United States, or by the satisfaction, pro tanto, of the obligations then secured by the aforementioned documents.

April 03, 1996

CIMARRON SERVICE CORPORATION, as Trustee

By: Hallie E. Cox
HALLIE E. COX, President

State of: CALIFORNIA
County of: Stanislaus

On 04/03/96, before me, the undersigned Notary Public in and for said County, personally appeared HALLIE E. COX, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

Cathy E. Latner
CATHY E. LATNER Notary Public

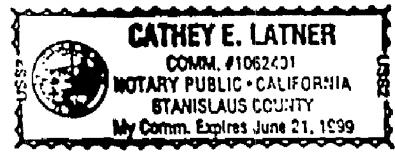


EXHIBIT A 2092