

FEB 14 2017

Superior Court of California
County of Tuolumne

By: *Elizabeth O'Mara* Clerk

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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

7	Sierra Park Services, Inc.,)	No: SC19470
8	Plaintiff,)	DEFENDANTS' TRIAL BRIEF
9	vs.)	DATE: February 24, 2016
10	Nicholas and Janice Carter,)	TIME: 8:30 a.m.
11	Defendants.)	DEPT: 5
)	COMMISSIONER: Philip A. Pimentel

12
13 **I. INTRODUCTION.**

14 The Plaintiff is a for profit corporation posting profits and paying taxes on those profits.
15 The plaintiff has shareholders and allows only its shareholders to vote on decisions regarding all
16 matters. The Defendants are not shareholders. The Plaintiffs budget clearly indicates the budget
17 is for assessments. See Attachment A, the Plaintiff's budgets, page 1, lines 1, 24, 30 and 37.
18 The Plaintiff's bylaws provide only for levying assessments upon the outstanding shares of the
19 corporation. See Attachment B, Bylaws of the Plaintiff, May 26, 2013, page 14, Section 16.
20 "Assessability of Shares".

21 Since the Plaintiff's inception in 2013 the Plaintiff had put forth a preposterous and
22 outlandish web of lies regarding its position, status, ownership, control and authority over certain
23 items and the parcel owners. The Plaintiff claimed it owned and controlled the roads in and
24 around the Odd Fellows Sierra Camp Subdivision (the subdivision) and within the subdivision it
25 claimed it owned and controlled the land, equipment, structures and other improvements

1 including but not limited to lodge, other buildings, pond, playground, picnic facilities, pedestrian
2 bridges, caged in dumpster area, etc., but excluding the water system. It also claimed it had
3 control and authority over the parcel owners. The Defendants' were aware this is untrue and in
4 fact there are no documents or other instruments granting such ownership, control, authority or
5 affiliation between the Plaintiff and Defendants or the subdivision.

6 Two months after filing thirteen Small Claims cases in July 2016 the Plaintiff for the first
7 time changed its story from one of ownership, control or authority to claiming the Plaintiff could
8 demand payments from non-shareholder parcel owners based on Civil Code 845. The Plaintiff
9 had never before put forth it was operating under Civil Code 845. Neither its Articles of
10 Incorporation, bylaws, corporate minutes, newsletters, other communications nor billings
11 indicate it is doing business under the auspices Civil Code 845 or made any mention thereof.

12 On October 28, 2016 at one of its court appearances, the Plaintiff again changed its story
13 to saying it is charging for *road repair and maintenance* under Civil Code 845 (italics used for
14 emesis). This is entirely inconsistent with the Plaintiff's previous claims and demands. Also, the
15 amount the Plaintiff invoiced, and it is suing for, does not agree with the road repair and
16 maintenance portions of its budgets. See Attachment A, the Plaintiff's budgets, page 1, line 5.

17 A significant portion of the Plaintiff's expenses are incurred from maintaining, operating
18 and improving portions of Odd Fellow Sierra Recreation Association, Inc.'s (OFSRA)
19 properties, equipment and facilities without any contract, agreement or affiliation with OFSRA
20 or the subdivision. OFSRA receives unjust enrichment from the Plaintiff maintaining and
21 improving its properties, equipment and facilities.

22 23 **II. THE SUBDIVISION.**

24 The subdivision was created and authorized by the state in 1950 and re-subdivided and
25 re-authorized by the state in 1959. The Final Subdivision Report (1959) and the corresponding

1 Subdivision Maps recorded in Tuolumne County report there were 365 subdivision lots. Since
2 then 15 lots have been merged with corresponding maps recorded in Tuolumne County
3 modifying the Subdivision Map to indicate 350 lots as of February 2016. It is not known if any
4 additional mergers have occurred since.

5
6 **III. CIVIL CODE 845 DOES NOT APPLY.**

7 The Plaintiff is not the owner of any easement in the nature of a private right-of-way or
8 of any land to which any such easement is attached.

9 The easement, if any, is owned by more than one person and is attached to parcels of land
10 under different ownership or, more specifically, the subdivision lot owners and certain other
11 parcel owners near or adjacent to the subdivision.

12 No agreement exists between the Plaintiff and the non-shareholder parcel owners.

13 The Plaintiff has not surveyed the roads to generate and publish a schedule of how the
14 Plaintiff costs may be shared proportionately by each non-shareholder parcel owner.

15 There are 363 parcels that use the roads. From the 363 parcels, there are 350 subdivision
16 lots and thirteen parcels that are not part of the subdivision but use the roads for ingress and
17 egress; eight parcels owned by OFSRA, four private party owned parcels (Edward J. and Dolores
18 Cardoza, Allen and Lana Lopes, Joseph Freitas and Gladys E. Freitas and Floellen W. Smith)
19 and one owned by Tuolumne Utility District.

20 For the Plaintiff to consider using Civil Code 845 for road maintenance, all 363 parcel
21 owners should have equal access of all types, including but not limited to, information, voting
22 rights, voting weight, selection of representatives, managers, projects, vendors, etc. regarding if
23 road maintenance is desired and if deemed required and all road maintenance decisions.

24 For any election or decision were the outcome may affect all of the 363 parcel owners, all
25 of 363 parcel owners should be included in the election or decision. Since the Plaintiff's by-laws

1 limit voting on all matters to only its shareholders and since the Plaintiff seeks payment for road
2 maintenance from non-shareholder parcel owners for 2013/2014, 2014/2015 and 2015/2016 and
3 since the plaintiff did not provide the non-shareholder parcel owners equal access, including
4 information, voting rights, voting weight, selection of representatives, managers, projects,
5 vendors, etc. regarding if road maintenance is desired and if deemed required and all road
6 maintenance decisions, then for any election or decision were the outcome may affect all of the
7 363 parcel owners, a vote declining the matter should be automatically counted for each and
8 every non-shareholder parcel owner yielding effective election results, otherwise only the
9 shareholders alone should bear any and all costs.

10 The number of shareholders, election results and effective election results (shareholder
11 plus non-shareholders) for road maintenance (voted on as the entire budget including non-road
12 maintenance items) were:

13 ○ 2013/2014

- 14 ■ There was no request or authorization for the Plaintiff to perform road
15 maintenance or plow snow.
- 16 ■ The Plaintiff claims there were 51 Shareholders.
- 17 ■ There was no election.

18 ○ 2014/2015

- 19 ■ The Plaintiff claims there were 179 Shareholders
- 20 ■ Shareholder election results for Roads Maintenance and budget = 102
21 votes for and 1 vote against
- 22 ■ 102 for (yes) votes represents less than a majority of the 363 parcel
23 owners.

24 ○ 2015/2016

- 25 ■ The Plaintiff claims there were 187 Shareholders.

- 1 ▪ Shareholder election results for Roads Maintenance and budget = 91 in
- 2 favor 2 against.
- 3 ▪ 91 for (yes) votes represents less than a majority of the 363 parcel owners.

4 Even if the Plaintiff desired to demand payments using Civil Code 845, the Plaintiff does
5 not qualify, has failed to perform the steps necessary and has not conformed with the provisions
6 of Civil Code 845:

- 7 ○ The Plaintiff is not the owner of any easement in the nature of a private right-of-
- 8 way, or of any land to which any such easement is attached.
- 9 ○ No agreement exists between the Plaintiff and the non-shareholder parcel owners.
- 10 ○ The Plaintiff has not surveyed the roads to generate and publish a schedule of how
- 11 the Plaintiff costs may be shared proportionately by each non-shareholder parcel
- 12 owner.
- 13 ○ The Plaintiff never indicated or notified the non-shareholder parcel owners it was
- 14 or would be demanding payments using Civil Code 845.
- 15 ○ The Plaintiff has demanded payments for late fees at a rate of \$25 per month that
- 16 are not provided by Civil Code 845. In addition, these so called late fees are at a
- 17 rate so high that they are usury.
- 18 ○ The Plaintiff has included profit for maintaining any easement in the nature of a
- 19 private right-of-way, or of any land to which any such easement is attached. Civil
- 20 Code 845 provides only for costs.
- 21 ○ The Plaintiff's budgets include category level items not associated with
- 22 maintaining any easement in the nature of a private right-of-way, or of any land to
- 23 which any such easement is attached and not provided by Civil Code 845,
- 24 including but not limited to:
 - 25 ▪ Refuge Collection and Disposal

- 1 ▪ Pine Needle Collection
- 2 ▪ Maintain Common Areas
- 3 ▪ General Administration.

4 ○ The sections of the Plaintiff’s budgets titled “Maintain and Repair Roads” are
5 greatly exaggerated, including budget items not associated with maintaining any
6 easement in the nature of a private right-of-way, or of any land to which any such
7 easement is attached. Please see Attachment C, Inappropriate Items Included in
8 Plaintiff’s Budget “Maintain and Repair Roads” Sections for details.

9 ○ The Plaintiff’s budgets for 2014/2015 and 2015/2016 include additional costs not
10 associated with maintaining any easement in the nature of a private right-of-way,
11 or of any land to which any such easement is, including but not limited to:

- 12 ▪ 2014/2015 “Special Reserves to replace Bridge”. See Attachment A, Page
13 4, Bottom of page. Note: This is a pedestrian bridge not associated with
14 or near any easement in the nature of a private right-of-way, or of any land
15 to which any such easement is attached.

- 16 ▪ 2015/2016 “BRIDGE REPLACEMENT PROJECT”. See Attachment A,
17 Page 6, Bottom of page. The Plaintiff’s 2015/2016 budget shows \$50 for
18 this line item with a total billing of \$640, however the Plaintiff billed \$160
19 for the BRIDGE REPLACEMENT PROJECT with a total billing of \$750.
20 Note: This is a pedestrian bridge not associated with or near any easement
21 in the nature of a private right-of-way, or of any land to which any such
22 easement is attached.

23 ○ In addition to the points above, a notable portion of the Plaintiff’s demand for
24 payments from non-shareholder parcel owners include items for snow plowing.
25 The Plaintiff’s budget for snow plowing is magnitudes higher than what outside

1 contractors' charged in previous years. Not charging competitive pricing for
2 snow plowing or not putting snow plowing out for competitive bid places an
3 unfair burden on the non-shareholder parcel owners and provides and unjust
4 enrichment to the Plaintiff and its shareholders.

5
6 **IV. CONCLUSION.**

7 The Defendants are not shareholders of the Plaintiff.

8 The Plaintiff does not own, have title, easement or contract to the roads.

9 The Plaintiff does not have any contract, agreement or affiliation with the non-
10 shareholder parcel owners or the subdivision.

11 The Plaintiff has not surveyed the roads to generate and publish a schedule of how the
12 Plaintiff's costs may be shared proportionately by each non-shareholder parcel owner.

13 The Plaintiff has included many items that do not qualify under Civil Code 845.

14 The Plaintiff's operations, communications and billings are not based on or presented to
15 the parcel owners as being under Civil Code 845 causing the Defendants to determine they had
16 no liability to the Plaintiff.

17 Based on the foregoing, the Defendants have no liability to the Plaintiff.

18
19 **V. PRAYER FOR RELIEF.**

20 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- 21 1. The Plaintiff's demand for payments from the Defendants be denied.
22 2. For all court costs of suit incurred by Defendants including copy costs; and
23 3. For such other and further relief as this court may deem just and proper.
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25 **VI. VERIFICATION.**

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We are the Defendants in the above matter; the statements in the foregoing document are true of our knowledge.

DATED: December 16, 2016

Respectfully submitted,

By: *Janice M Carter*
Janice Carter
Nicholas Carter
Nicholas R. Carter