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(SPACE BELOW FOR FILE STAMP ONLY)

FILED

OCT 26 2012

Superior Court of California
County of Tuolumne

By: Vicki F. Boone Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF TUOLUMNE**

13 ODD FELLOWS SIERRA RECREATION
14 ASSOCIATION, a California corporation,

15 Plaintiff,

16 vs

17 ODD FELLOWS SIERRA HOMEOWNERS'
18 ASSOCIATION, a California non-profit
19 corporation; and DOES 1 through 500, inclusive,

20 Defendants.

Case No.: CV57297

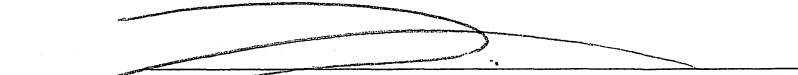
NOTICE OF ENTRY OF JUDGMENT

21 TO DEFENDANT AND IT'S ATTORNEY OF RECORD:

22 NOTICE IS HEREBY GIVEN that on September 18, 2012, judgment was entered in the above-entitled
23 action in favor of Plaintiff, ODD FELLOWS SIERRA RECREATION ASSOCIATION, a California
24 corporation, and against Defendant, ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION, a
25 California non-profit corporation. A copy of the judgment is attached hereto and marked as **Exhibit A**.

26 Dated: October 25, 2012

DAMBACHER, TRUJILLO & WRIGHT,
A Professional Law Corporation

27 
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FILED

SEP 18 2012

Superior Court of California
County of Tuolumne

By: Donna Benz Clerk

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF TUOLUMNE**

15 ODD FELLOWS SIERRA RECREATION
16 ASSOCIATION, a California corporation,

17 Plaintiff,

18 vs.

19 ODD FELLOWS SIERRA HOMEOWNERS'
20 ASSOCIATION, a California non-profit
21 corporation; and DOES 1 through 500, inclusive,

22 Defendants.

Case No.: CV57297

JUDGMENT AFTER PROVE-UP HEARING

Dept: 3

Judge: Hon. Donald Segerstrom

Hearing Date: July 13, 2012

23
24 This matter came on regularly for a prove-up hearing on July 13, 2012, at 9:30 a.m., before the
25 Honorable Donald Segerstrom, Judge, presiding. Del Wallis, President of Plaintiff ODD FELLOWS
26 SIERRA RECREATION ASSOCIATION ("Plaintiff"), was personally present with Plaintiff's attorney
27 Timothy T. Trujillo, Esq. of Dambacher, Trujillo & Wright, A Professional Law Corporation. The
28 Court heard evidence both oral and documentary.

1 **I. Plaintiff's Complaint**

2 Plaintiff asserted the following causes of action against Defendant ODD FELLOWS SIERRA
3 HOMEOWNERS' ASSOCIATION ("Defendant") in its complaint filed on February 23, 2012:

- 4 1) Breach of Contract-Water Use Agreement;
5 2) Breach of Implied Covenant of Good Faith and Fair Dealing-Water Use Agreement;
6 3) Breach of Contract-License Agreement;
7 4) Breach of Implied Covenant of Good Faith and Fair Dealing-License Agreement;
8 5) Breach of Oral Contract-Other Agreements;
9 6) Breach of Implied Covenant of Good Faith and Fair Dealing-Other Agreements;
10 7) Common Counts-Account Stated;
11 8) Common Counts-Open Account; and
12 9) Declaratory Relief.

13
14 **II. Factual Findings by Court**

15 The Court makes the following factual findings:

16 **A. The Park.**

- 17 1) Plaintiff is the legal owner of certain real property within certain subdivisions in
18 Tuolumne County, California known as I.O.O.F. Odd Fellows Sierra Camp Subdivision
19 No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 (collectively, the
20 "Park"), including, without limitation, the real property on which the following
21 improvements are located: (i) roads/streets, (ii) wells for the supply of water; (iii)
22 recreation hall, and (iv) lake, picnic area, baseball field and playground.
23
24 2) The Park consists of 364 separate lots owned by third parties as set forth in the original
25 maps recorded for I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F.
26 Odd Fellows Sierra Camp Subdivision No. 2. Plaintiff is also the owner of one lot within
27 the Park. Plaintiff is also the legal owner of certain real property adjacent to the Park.
28
3) Plaintiff owns the wells, water distribution system and water storage system that provide
water to the lot owners of the Park.

1 4) Plaintiff also owns the streets and roads within the Park.
2

3 **B. The Water Agreement.**

- 4 1) On or around October 12, 1986, Plaintiff and Defendant entered into that certain Water
5 Use Agreement (the "Water Agreement"), pursuant to which, among other things,
6 Plaintiff agreed to provide water to Defendant on a wholesale basis provided that
7 Defendant pay for all expenses associated with the provision of such water.
8 2) The initial annual fee for the provision of water as set forth in the Water Agreement was
9 \$37,500.00.
10 3) After 1986, the annual fee for the provision of water increased from year to year as
11 permitted by the Water Agreement
12 4) The annual fee for the provision of water pursuant to the Water Agreement was to be paid
13 in advance.
14 5) Between October 1986 and May 2011, Defendant paid all fees due pursuant to the Water
15 Agreement.
16 6) Plaintiff did not make any profit on the provision of water to the Defendant pursuant to
17 the Water Agreement.
18 7) The Water Agreement contains an attorneys' fee provision.
19 8) The term of the Water Agreement was set to expire by its own terms on October 11,
20 2011.
21

22 **C. The License Agreement.**

- 23 1) On or around October 12, 1986, Plaintiff and Defendant also entered into that certain
24 License Agreement (the "License Agreement"), pursuant to which, among other things,
25 Plaintiff agreed to permit Defendant to use the streets and roads owned by Plaintiff within
26 the Park for access purposes and agreed maintain such streets and roads provided that
27 Defendant pay for all expenses associated therewith as a license fee.
28

- 1 2) The license fee pursuant to the License Agreement was initially to be paid in arrears.
- 2 However, in 1986, the License Agreement was subsequently modified by the parties so
- 3 that Defendant would pay in advance for the estimated cost of the expenses incurred by
- 4 Plaintiff pursuant to the License Agreement.
- 5 3) Between October 1986 and May 2011, Defendant paid all fees due pursuant to the
- 6 License Agreement.
- 7 4) Plaintiff did not make any profit on the provision of services to the Defendant pursuant to
- 8 the License Agreement.
- 9 5) The term of the License Agreement was set to expire by its own terms on October 11,
- 10 2011.

11
12 **D. The Other Agreements.**

- 13 1) Between October 12, 1986 and May 31, 2011, Plaintiff and Defendant also entered into
- 14 various other agreements pursuant to which, among other things, Plaintiff agreed to
- 15 provide the following services or improve and provide use of certain areas of the Park:
- 16 access gate maintenance and repair; pine needle disposal; improvement and use (and
- 17 maintenance (and repair as applicable)) of lake, recreation hall, picnic area, baseball field,
- 18 playground, and other similar types of areas on the Park; maintenance and repair of
- 19 vehicles used in connection with the foregoing; services of an onsite caretaker to assist in
- 20 providing the aforementioned services; and certain other services (the "Other
- 21 Agreements"). The Water Agreement, License Agreement and Other Agreements may
- 22 hereinafter collectively be referred to as the "Subject Agreements".
- 23 2) Defendant agreed to pay, in advance, for the estimated cost of providing the forgoing
- 24 pursuant to the Other Agreements at the same time as the annual fee due pursuant to the
- 25 Water Agreement.
- 26 3) Between October 1986 and May 2011, Defendant paid all fees due pursuant to the Other
- 27 Agreements.
- 28

- 1 4) Plaintiff did not make any profit on the provision of services to Defendant pursuant to the
2 Other Agreements.
3 5) The parties agreed that the term of the Other Agreements would expire upon expiration of
4 the Water Agreement and License Agreement.
5

6 **E. Determination and Payment of Annuals Fees Due Pursuant to Subject Agreements between**
7 **October 12, 1986 and May 31, 2011.**

- 8 1) During each May between October 12, 1986 and May 31, 2011, Plaintiff, at its annual
9 meeting of shareholders, would determine, based on the previous fiscal year's costs, the
10 estimated cost of the services to be provided by Plaintiff to Defendant pursuant to the
11 Subject Agreements for the upcoming fiscal period of June 1 through May 31 (the
12 "Annual Fee(s)").
13 2) Plaintiff would then promptly inform Defendant of the Annual Fee for the fiscal period of
14 June 1 through May 31. Defendant would then divide such Annual Fee by the number of
15 lots in the Park (based on the subdivision maps originally recorded for the Park) and
16 invoice each lot owner of the Park for their prorata share of such Annual Fee (on a per lot
17 basis).
18 3) Between October 12, 1986 and May 30, 2011, the lot owners of the Park paid no further
19 amounts to Defendant other than their prorata share of the Annual Fees.
20 4) Between October 12, 1986 and May 31, 2011, Defendant promptly paid the Annual Fees
21 due to Plaintiff.
22 5) Between October 12, 1986 and May 31, 2011, the Annual Fees paid by Defendant were
23 less than the expenses incurred by Plaintiff in providing the services to Defendant
24 pursuant to the Subject Agreements.
25
26
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1 **F. Determination and Partial Payment of Annual Fee Due Pursuant to Subject Agreements**
2 **between June 1, 2011 and May 31, 2012.**

- 3 1) On May 29, 2011, Plaintiff's shareholders approved a budget of \$302,120.00 for the
4 services to be provided by Plaintiff to Defendant pursuant to the Subject Agreements for
5 the fiscal period of June 1, 2011 to May 31, 2012. The budget approved by Plaintiff for
6 the fiscal period of June 1, 2011 to May 31, 2012 was comparable to Plaintiff's budget
7 for the services provided by Plaintiff to Defendant pursuant to the Subject Agreements
8 for the previous 2010-2011 fiscal year (adjusted for inflation and increased expenses).
- 9 2) Plaintiff informed Defendant of the Annual Fee due for the fiscal period of June 1, 2011
10 through May 31, 2012 (the "2011-12 Annual Fee") and thereafter, Defendant invoiced
11 each lot owner of the Park for their prorata share of the 2011-12 Annual Fee (or \$830 per
12 subdivision lot).
- 13 3) On or about July 31, 2011, Defendant paid Plaintiff \$50,000.00 as a partial payment for
14 the 2011-12 Annual Fee. Defendant made no further payments to Plaintiff for the period
15 of June 1, 2011 to September 15, 2011.
- 16 4) On September 15, 2011, Plaintiff invoiced Defendant for the services being provided and
17 to be provided to Defendant pursuant to the Subject Agreements between June 1, 2011
18 and May 31, 2012 (the "Subject Invoice").
- 19 5) On or about October 4, 2011, Defendant paid Plaintiff \$19,350.00 as a further partial
20 payment for the 2011-12 Annual Fee.
- 21 6) After October 4, 2011, Defendant indicated to Plaintiff that it would not pay the balance
22 due on the Subject Invoice despite the fact that Defendant had billed each lot owner of
23 the Park (364 lots) an amount designed to collect the total amount due by Defendant to
24 Plaintiff pursuant to the Subject Invoice (\$302,120.00).
- 25 7) In June 2012, after filing the complaint in this matter, Defendant paid \$19,000.00 to
26 Plaintiff as a further partial payment for the 2011-12 Annual Fee.
- 27
28

1
2 **II. Legal Findings and Orders by Court**

3 The Court makes the following legal findings and orders:

4 **A. 1st, 3rd and 5th Causes of Action.**

5 As to the first (Breach of Contract-Water Use Agreement), third (Breach of Contract-License
6 Agreement), and fifth (Breach of Contract-Other Agreements) causes of action, the Court finds as
7 follows:

- 8 1) The Subject Agreements, as modified, were a valid and binding obligation of Plaintiff
9 and Defendant.
- 10 2) Defendant breached each of the Subject Agreements by failing to pay the amounts due
11 pursuant thereto.
- 12 3) The aforesaid breaches by Defendant were without justification or excuse.
- 13 4) Plaintiff has performed all of the covenants and conditions on its part to be performed
14 under the Subject Agreements, express or implied, except for those covenants and
15 conditions excused by Defendant's breaches thereof,
- 16 5) As a proximate result of Defendant's breaches of the Subject Agreements, Plaintiff has
17 suffered damages in the amount of \$213,770.00.
- 18 6) The Water Agreement contain an attorneys' fee clause and Plaintiff has been required to
19 retain the services of an attorney to prosecute its complaint and is therefore is awarded its
20 attorneys' fees and costs.

21
22
23 **B. 2nd, 4th and 6th Causes of Action.**

24 As to the second (Breach of Implied Covenant of Good Faith and Fair Dealing -Water Use
25 Agreement), fourth (Breach of Implied Covenant of Good Faith and Fair Dealing -License Agreement),
26 and sixth (Breach of Implied Covenant of Good Faith and Fair Dealing-Other Agreements) causes of
27 action, the Court finds as follows:

- 28 1) In entering into the Subject Agreements, Defendant owed Plaintiff a duty of good faith
and fair dealing.

