

2004-08-02-letterfromattorneytohoaboardofdirectors.pdf

The following letter dated 08/02/2004 was written by an attorney at the law firm the HOA uses.

Subject:

Request for Association Financial Documents and Charges of Mismanagement of Funds

Dear Board of Directors Park Mediterrania Home Owners Association:

We have been asked to advise the Board on several issues. One area of inquiry related to the allegations contained in letters written to both the homeowners and to the Board from a homeowner by the name of (Andrew) Ralph Cosetta, and his request for documentation from the Association.

The first area to address is the question of whether the Association is required to submit all of its financial information to a homeowner who has made charges that the funds of the Association have been mismanaged. It was our recommendation that the Association provide additional documentation relating to the financial condition of the Association, including the recent audit of December 2003, and the reserve study, you may do so. Be advised however that the most recent legislation relating to the distribution of information to homeowners, which went into effect in January of 2004, has not yet been tested in any court, so a judge may find that additional records should be produced aside from those listed above. We understand that following our telephonic communication with management, certain financial documents and the mailing list have already been provided to homeowner Cosetta.

[Say what? Euclid did not provide me with any financial documents and/or mailing list]

Often, when there are charges of financial mismanagement such as those contained in the Cosetta letters, once the homeowners are informed of the amounts that have been paid out to maintain the common areas, they then realize their charges are groundless and the problem is resolved. We understand that feelings may be running much too high for these records to appease Mr. Cosetta and some other homeowners and that a recall election has been requested and scheduled for early September. We also have been advised that in the past few years, the Board has made multiple large expenditures for essential repairs, and only after obtaining a sufficient number of bids.

After reading the letters of Mr. Cosetta and hearing about the amounts spent within the past few years to maintain the Association, we began a systematic review of the governing documents and reviewed some of the financial information provided to us, including the recent audit. You should realize that we do not have all of the financial information nor are we accountants. We are only commenting upon some obvious facts which appear from those documents we have reviewed. It appears that the reserves are about \$500,000 underfunded and the Association is supposed to put nearly \$117,000 into reserves each year, but the amount being funded is only

about 25% of the recommended amount. If it has not already occurred, the Board should probably meet with the CPA to go over the audit and the reserve study, so any specific questions about this can be answered by the accountant.

[As you can see the attorney wrote: “It appears that the reserves are about \$500,000 underfunded and the Association is supposed to put nearly \$117,000 into reserves each year, but the amount being funded is only about 25% of the recommended amount.” Wow, I found the smoking gun. What the attorney wrote proves my charges of financial mismanagement].

We note that the original documents, written in 1969, indicate that Park Mediterrania Owners Association was constructed as a planned unit development ("PUD") rather than as a condominium complex. The original documents relating to maintenance duties of the Association followed California law at the time, and placed most of the maintenance responsibilities of the separate interests upon the individual owners.

In 1985 an amendment was written and recorded which transferred most of the maintenance and repair responsibility for the separate interests to the Association, including the duty to pay the owners' gas, water, trash pick-up and electric bills. This amendment also requires that the Association maintain the air-conditioning systems and almost every other component within the property. It is our understanding that the Association has also been paying for termite eradication. I can honestly advise you that I have never seen even a condominium complex where the association assumes this much responsibility unless you have adequately provided for this level of responsibility. It may well be that the broad maintenance responsibility is the reason that this Association is underfunded. We would have expected to see a large assessment increase at the time of the 1985 amendment commensurate with the monumental increase in Association responsibility, if a financial shortfall was to have been avoided.

It is our recommendation that prior to the recall and election scheduled in September, a letter be sent to the homeowners outlining the history of the Association and its maintenance obligations under the CC&Rs and the 1985 Amendment. The members may not be aware of the extent that their Association is required to pay for certain obligations. It should be explained that any elected board is going to be faced with the serious problems of resolving the deficit in reserves, along with the responsibility for meeting the required operating expenses.

In our review of the documents, we do not see that it is the responsibility of the Association to "replace" any portion of the separate interest of the individual owners, nor is there any obligation for the Association to pay for the eradication of termites or pay for the damage caused by wood destroying pests. Calif. Civil Code §1364 places the responsibility for eradicating termites upon the owners of the separate interests, as follows:

(b). . . (2) In a planned development as defined in Section 1351, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the

repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms. .[Underlining added]

If the Association can eliminate this expense, it may assist in some small degree to alleviate the current budget crunch. Since termite removal has been provided in the past to the homeowners, a letter should be sent to them advising that legal counsel has made a determination that it is the duty of each owner to pay for their own termite eradication. The owners should be put on notice that based upon this advice, the Association will no longer provide termite treatment for any portion of the separate interest of the owners, so they will not be surprised when their requests for this type of assistance are denied.

No matter who is on the Board, if this Association is going to continue to be obligated to the homeowners as required in the 1985 Amendment, it must cut expenses and/or raise assessments in order to balance the budget and bring reserves into line. Again, we are not CPAs or accountants and it would require the assistance of such a person to determine the future financial needs of Park Med. Although it may be an unpopular thing to do, the owners should be advised at the earliest possible date that if they want to continue to have all of these many benefits then they must be willing to pay for them.

If you have any questions about any of the above or if you wish us to assist the Board in drafting a response to the homeowners to Mr. Cosetta's letter, please do not hesitate to contact us at any time.