

Park Mediterranea HOA Board of Directors

Date: 6/30/2012

Selected Minutes of 6/27/2012 Meeting & Formal Termination Letter for WSR Sales and Management

The Directors of the Board of Directors for Park Mediterranea HOA held an HOA Meeting on 6/27/2012 in which the following persons attended:

President: Lawrence F. Schoelch
Vice President: Chet Bruce
Treasurer: Dalilah Rosales
Secretary: Vanessa Willis
Member at Large: Alex Taylor.

Present on behalf of WSR was Mark Johnson and Pam.

After due consideration, the undersigned 3 members of the Board voted to terminate its management company, WSR Sales and Management (hereinafter, "WSR") for cause. Because it was determined that a formal opinion letter should be prepared specifying the "cause" for termination, it was determined by the Board to be advisable to spell out in a formal letter the specific "causes" for termination as follows:

First, there appears to be some discrepancies in terms of the Minutes regarding whether WSR was authorized by the Board to make the purchase of 2 properties at a foreclosure auction sale. The original copy of the 5/26/2010 Minutes: (1) did not have a quorum since only 3 Board members are listed as present, and 3 are listed as absent; (2) No mention is made of these purchases. See attached a copy of the original 5/26/2010.

Later, it appears that the first page of the 5/26/2010 was materially amended as follows: (1) Suddenly, there were 5 members present at the 5/26/2010, with only Dalilah Rosales absent. (2) Also, the following was inserted into the Minutes by altering the margins for the paperwork:

"H. Board wants to purchase two units within the community to help generate more money than what is currently being paid in interest by the bank. The Board has discussed this in the past and has instructed the Account Manager to look for a couple to purchase. Motion by Chet Bruce Seconded by Alma Pascoe. MCU."

See the original and revised copy of 5/26/2010 Minutes. Were these Minutes amended AFTER the purchase of the units in question? Was this revision of the Minutes revealed to ALL of the Board members? Dalilah Rosales indicates that it was NOT.

Secondly, even if the Amended Minutes are accepted, there is NO provision for an opinion letter by counsel, or an opinion letter from an accountant before taking these actions. It is submitted that WSR did NOT comply with its duties as manager in so doing, as discussed below. It is submitted particularly that WSR did not comply with its "fiduciary duty to exercise prudent fiscal

management in maintaining the integrity of the reserve account.” By purchasing these units. Civil Code Section 1365.5(c) (2). The fact that the manager profited from this transaction, including profiting from their property management, is another factor that may have skewed WSR’s judgement in this regard. The truth is that a manager of a reserve account is obliged to choose only the safest of investments where the principal is not at risk. As I am sure they well know by now, if WSR had consulted its regular HOA attorneys, the Fiore, Racobs firm---I am sure they would have been apprised that this is the state of the law and been encouraged not to advise the Board in making these investments. Real estate investments are too risky, too illiquid, require serious management and liability issues to make this appropriate for the investment of the Board for its reserve funds. The kind of investments that are clearly appropriate for reserve funds is generally limited to those type of investments where the principal is not at risk---AAA bond investments, Treasury bills and bank accounts (which are guaranteed against bank failure by the full faith and credit of the U.S. Government). I am unaware of a single instance where another HOA (whether in California or otherwise) has made this same kind of investment using its reserve funds---especially if advice of counsel was sought in advance of the actions taken.

Additionally, consultation of the HOA’s accountants should also have been conducted, since the HOA is a non-profit corporation, and endeavoring for the HOA to act as a for-profit business with reserve funds may have implications that are relevant to the taxes paid.

Third, even if the Amended Minutes are accepted as factual, there is NO instruction that Mr. Wolschleger should overpay for the units in question---which is precisely what occurred. The manager should have obtained from the Board, as it did not, the upper value for purchasing the units in question. It has been remarked that if the HOA were forced to sell these properties at this time, their lower market value and the transaction expenses would yield serious losses for both sales. For that reason, it is requested that WSR immediately repurchase both units at their original sales prices and return the monies thereby lost to the reserve account. Because of these imprudent purchases, the HOA was forced to raise HOA dues. Precisely because the undersigned Board members believe that WSR should account for its actions by repurchasing these properties, we further believe there is a potential conflict of interest in terms of WSR continuing to manage the HOA.

Fourth, WSR totally ignored the following statutory provision of the Davis-Stirling Act in giving this advice, nowhere cited in any opinion letter:

Civil Code Section 1365.5(c)(1)

“The Board of Directors shall **not** expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.”
(Emphasis added.)

Fifth, the opinion letter obtained by WSR more than a year later (August 18, 2011) and tendered to the Board completely misstates the controlling law. Also, the attorney in question rendering the opinion is so clearly unqualified that it forces the undersigned Board members to question their good faith in tendering this letter to the Board as appropriate legal advice. WSR has never have revealed to the undersigned Board members that this particular attorney: (1) had previously pleaded guilty to a felony in 2001; (2) was disbarred for 8 years (continuously from 5/19/2001 through April of 2009) for his past ethical violations; (3) apparently, now this attorney operates out of his home and not an office; (4) this attorney has only practiced law for 2 years out of the previous 10 years; and (5) this attorney does not appear to be an expert in the field of HOA law or the obligations of a trustee in making investments. None of the above facts about this attorney were revealed by WSR to the Board---any one of which would have caused the Board to reject this advice and seek an opinion letter from a competent attorney. And a competently written opinion letter would undoubtedly have revealed the misconduct of WSR in offering this imprudent advice to the Board to buy these properties without first seeking advice of counsel and explaining the potential adverse consequences of this decision and how such investments were arguably improper for this Board to do. Such an opinion letter, by the way, would likely have suggested that WSR had an obligation to make up for losses to the reserve funds due to WSR giving the Board this imprudent advice.

When this attorney letter has been cited to homeowners, management declined to produce it for inspection, citing alleged confidentiality concerns. Having read the letter leads us to question the exact motives for that refusal since it does not appear there is anything particularly confidential in its content. The letter itself makes it clear in its first sentence that: "This firm has been requested by WSR Management" to give an opinion---the attorney in question was NOT chosen by the Board. In any case, given the clearly inappropriate nature of the attorney hired, the Board is also requesting a refund of any funds spent on this letter. In addition to being a waste of HOA funds, this letter has fundamentally misled the Board.

Sixth, Mr. Wolscheher and his supporters have liberally made statements that we believe do not accurately reflect the law in this regard in seeking to justify the actions in purchasing these properties. Although the opinion letter liberally cites the "business judgement" rule, this will not exonerate a management company who is required to follow the law, and is obligated to become informed as to its legal obligations in performing its duties. If a Board is not given proper expert opinion by its managers, then the business judgement rule will have no application---since this rule is never an excuse for failure to follow the law, irrespective of the technicalities involved, none of which were hinted at in the opinion letter in question. The fact is that WSR has not been neutral in its administration of the HOA and has played one faction of the Board against another, and favored the interests of those Board members in favor of their continued management of this HOA. This strategy of playing one Board member against others is an old playbook for management companies seeking to continue their management of an HOA notwithstanding dissident factions on the Board. But we do not believe it is proper, especially since WSR had a fiduciary duty to represent all homeowners, including any dissident factions on the Board.

Seventh, it is a fact that John Mark Plocher, who formerly was the named broker for WSR, has had his real estate license revoked by the California Department of Real Estate. Although WSR has argued that this revocation was not material, I note that Mr. Plocher has been quietly replaced as listed officer for the corporation and replaced by Jeffrey Wolschleger. Given that it was precisely Mr. Wolschleger's imprudent advice that caused the Board to purchase the above mentioned properties, the undersigned Board members no longer have confidence in his judgement, or that of WSR.

Eighth, there are other reasons that cause the Board to be concerned about WSR. Board members and homeowners have repeatedly complained about lights that are on 24 hours a day at the complex and nothing has been done about this problem for several months. WSR has been very lax in its enforcement of the governing documents, issuing very few violation citations during its management of the property. The undersigned Board members simply feel that WSR has not been diligent or successful in managing the property in general.

Ninth, Jeffrey Wolschleger has exhibited qualities that the Board believes are not favorable to his continued employment by this HOA. During meeting with homeowners complaining about the purchase of the 2 properties, Mr. Wolschleger exhibited considerable hostility. It is also believed that his friendliness toward some members of the Board contrasts dramatically with his hostility towards others. It is not the role of a manager to play favorites, irrespective of how he feels about individual Board members---and Mr. Wolschleger has never been any good at masking his feelings in either case.

Tenth, the contracting party on the original contract was WSR Sales and Investment. This was a dba that was cancelled when Mr. Plocher was removed and then apparently reinstated (under a different DRE license number) for Mr. Wolschleger's benefit. We are not exactly sure that the management company is exactly the same as the original contracting party, but are not necessarily reassured about the changeover, especially given the reservations mentioned about Mr. Wolschleger and his judgement.

Finally, concern has been expressed about the possible enforcement of a so-called "evergreen" clause in the management contract, that purports to automatically renew the contract in the absence of a written revocation. I think there are serious questions whether this clause would be enforceable, however, even assuming arguendo this is true, I believe the issue is a red herring. Given that discharge for cause does NOT require compliance with this contractual provision, the Board believes this provision is inapplicable. Also, in light of the fact that misrepresentations have been made to the Board---and the opinion letter supposedly justifying the manager's actions---has only been recently reviewed by the current Board---it is submitted that the Board has not been given access to all relevant facts and circumstances in retaining WSR to this date. Unless WSR can establish that the questionable background and qualifications of the attorney that issued this opinion letter was fully revealed to the Board, I do not believe there is any basis for blaming the Board for any alleged inaction. The Board could have easily exercised its rights under the contract in a timely manner if competent counsel had been consulted to write an accurate opinion letter, as WSR should have done. In any case, the Board believes that the damages caused by the errant advice of your management company has caused the HOA far more in damages than any prejudice asserted by WSR.

One final note. The foregoing does not constitute an exhaustive listing of all the problems and damages suffered by the HOA based upon the actions of WSR, however, it is enough to justify its immediate termination. The termination is to become final 60 days from the Board meeting that occurred on 6/27/2012.

I believe that if WSR ponders on the foregoing considerations that it will see the wisdom of moving on with an orderly transition to another management company and not seek to unnecessarily interpose objections that will only permit relations with the Board to deteriorate further. Although this is, of course, their decision.

We, the three undersigned Board Directors, agree with this letter and affirm its contents.

Signed on June 29, 2012.

Lawrence F. Schoelch, President.

Dalilah Rosales, Treasurer.

Vanessa Willis, Secretary.

The following Directors were present at the HOA meeting, but disagreed with the termination (and may or may not desire to present their own views in regard to the foregoing---the undersigned will not presume to speak for them, except to note their opposition to the termination).

1. Alex Taylor
2. Chet Bruce.