

City counter sues developer over sewage spill

Contributed by Elizabeth Larson
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LAKEPORT ‐ A developer who is suing the city of Lakeport over the Vista Point Shopping Center is being counter sued by the city over his operation of a lakeside trailer park, which the city alleges led to a sewage spill that required expensive system upgrades.

The target of the suit is developer Barry Johnson, who owns Will-O-Point Resort.

In April, Johnson filed a lawsuit against the city and Mayor Buzz Bruns, alleging that the city broke a contract with him when it sold the ground under the shopping center to developer Matt Riveras, who also is Bruns' son-in-law, as Lake County News has reported.

Riveras also is involved in a suit against Park National Bank, which is attempting to foreclose on the loan for the shopping center's building lease held by Meridian Investments. Meridian had partnered with Johnson's Superior Acquisitions in an attempt to buy the Vista Point property last year, as Lake County News has reported.

Meanwhile, Riveras is suing Meridian, alleging that the shopping center's condition merits termination of the ground lease which has about 20 years left on it.

Now, adding to the complex web of legal activity is a July cross complaint, filed by the city of Lakeport, which accuses Johnson of negligence in the operation of the Will-O-Point Resort.

The city's suit claims that Johnson's trailer park caused a backup which maxed out the sewer system, resulting in a release of treated wastewater in April of 2006.

That wastewater release ultimately caused the Central Valley Regional Water Quality Control Board to hit the city with a cease and desist order; that order was accompanied by a hookup ban in January of 2007. The city spent millions of dollars in system upgrades to have the order lifted, as Lake County News has reported.

City Attorney Steve Brookes said the cross complaint is "skeletal" and is likely to be amended. But, basically, he said the city believes Johnson failed to cap certain sewer cleanouts which led to the system overflow.

"The allegation is real general in nature, but there were significant flows coming from that area," he said.

The complaint seeks \$300,000 from Johnson for the sewer issue, and also accuses him of breach of contract for failing to arbitrate claims regarding Will-O-Point.

A third cause in the complaint relates to \$18,000 that the city says Johnson owes for sewer and water services at Will-O-Point.

A similar suit was filed by the city in 2003; that case, which alleged that Johnson owed \$42,000, was dismissed without prejudice on Sept. 8 by Judge David Herrick, according to court documents.

Brian Carter, Johnson's attorney, said an Oct. 24 hearing will be held on a motion he filed Sept. 3 to have the case dismissed.

Regarding the other suits between Park National Bank and Riveras' company Donica, and Superior and the city, Carter said there has been "a fair amount of activity" recently, with all sides ordered to mediation on Oct. 3.

Brookes added that the mediation is meant to see if the numerous interests can reach a full or partial settlement without going through a lengthy court process. A visiting Sonoma County judge ordered the mediation, which is set to take place in Walnut Creek.

He said Park National Bank is pushing the mediation. "They're the ones owed a lot of money."

The mediation could prove extremely important to the city, which is financially strapped this year.

Brookes said the city's insurance carrier has taken the position that its memorandum of coverage does not cover legal expenses for a lawsuit such as this one against the city and Bruns.

"They're essentially saying this is a contractual dispute," he said, which is outside of the kinds of garden variety legal issues, such as employee-related accidents, that it usually covers.

That means that unless the suit is resolved in mediation, the city likely will have to hire outside counsel, said Brookes, who himself may be a potential witness in the case. Brookes said he had no idea what outside counsel might cost the city for this case.

He said the city also will cover the costs to defend Bruns, who is being sued in his official capacity as mayor. Although Bruns recused himself from discussions over the property sale, Johnson's suit alleges he used his influence to sell the city-owned property to his son-in-law, a claim Riveras told Lake County News in a previous interview was patently false.

Donica has since been granted leave not to attend the Oct. 3 mediation, said Carter.

From Carter's perspective, seeing Donica terminate the ground lease and become owner of the entire property free and clear of the lease "is alarming," especially since he and his client believe the property is worth much more than the \$1,001,000 Riveras paid for it.

There is a lot of discussion and discovery yet to take place in the case, said Brookes.

Brookes said Superior Acquisitions has not made any overtures to the city regarding a possible settlement.

He said both Superior and Donica appear focused on the shopping center. "They seem to both want what we sold."

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