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Litigation Summary

AAFPO v. Angel Fire Resort Operations, D-809-CV-2020-00183

A summary of AAFPO's Complaint in the Eighth Judicial District Court, County of Colfax against Angel Fire Resort Operations, and the reason for filing the Complaint, was provided to the members at the October meeting of AAFPO's Board of Directors. The following is an update on what has happened in the litigation since that time, in an effort to keep AAFPO's members informed.

AAFPO filed the Complaint in this case for the following reasons: (1) to have the current Board declared legal; (2) to have a declaration that the Board is entitled to have information regarding collection of assessments and how assessments are spent; (3) to have a declaration that the Board has the right to contract with a third-party that is not the Resort for collection of assessments; (4) to determine whether the Resort has been fulfilling its fiduciary duties to AAFPO's members regarding collection and spending of the assessments collected from AAFPO's members; and (5) for injunctive relief to require the Resort to pay AAFPO 5% of collections, as set forth in the Bankruptcy Plan from 1996.

The threshold question in this case is whether the Board is legally constituted. Three days after the Resort filed an Answer to the Complaint, AAFPO filed a Motion for Partial Summary Judgment on this issue. You can see the legal arguments in the Memorandum of Points and Authorities, Response by the Resort and the Reply in Support of the Motion. Hearing on the Motion was held on February 8, 2021. We are waiting for the Court's decision.

In this lawsuit, AAFPO primarily seeks transparency and accountability. The main point of the litigation is for AAFPO to obtain information on how much the Resort collects in assessments, what property owners are not paying assessments, and how the assessments collected are being spent by the Resort.

Historically, the Resort has provided summaries of budgets for expenditures and summaries of how assessments were spent. However, AAFPO does not have access to backup documentation showing how the assessments were spent. Additionally, AAFPO does not have access to the database that shows what members have paid assessments and what members are not paying assessments. AAFPO also does not have access to any bank account records for any account that may be holding assessments collected from members of AAFPO.

The Resort has required AAFPO's Board members to sign a non-disclosure agreement in order to obtain any of the above referenced information. It is the opinion of AAFPO's attorneys that AAFPO's Board members cannot sign the NDA proposed by the Resort because much of the information sought is information AAFPO must provide its members under the Homeowner Association Act.

The Resort does not agree that AAFPO is a Homeowner Association under the Homeowner Association Act. That is why, on January 28, 2021, AAFPO filed a Motion to Compel, asking the Court to order disclosure of information without NDAs required. The Resort has filed a Response to the Motion, arguing that AAFPO is not a Homeowner Association, and even if it is a Homeowner Association, it would not have a right to share the Resort's financial information with its members. AAFPO has filed a Reply, stating that AAFPO is a Homeowner Association, and it has a duty to obtain and disclose information regarding how much money is collected in assessments from its members, and how that money is being used. We have requested a hearing on the Motion to Compel.

AAFPO is also attempting to obtain information on how much was spent on construction of the Country Club, and whether this information was provided to AAFPO, consistent with the terms of a contract between AAFPO and the Resort wherein AAFPO agreed to pay 40% of its 4% of assessments collections that are earmarked for amenities.

AAFPO is attempting to carry out its duties of loyalty and candor to its members by obtaining important information regarding how much is being collected from members and what is being done with that money. Pursuant to the Bankruptcy Plan, these funds are to be placed "in a separate segregated account to be held in trust for the Property Owners. . . ." The assessments are to be used only for "the upkeep, maintenance, operation and improvement of the Amenities." In this lawsuit, AAFPO's Board of Directors is attempting to obtain the records necessary to determine whether the Resort is complying with the terms of its agreements, and living up to its fiduciary duties to AAFPO's members. Ultimately, we want to make sure we're obtaining information on how AAFPO's members' money is being used.

Sincerely,

/s/ *Donald A. Walcott*

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