



L A W O F F I C E S O F  
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February 23, 1998

Mr. Chet Loveland, President  
Discovery Bay Property  
Owners Association, Inc.  
P.O. Box 666  
Byron, CA 94514

Mr. Frank Cramer, Vice-President  
DBPOA  
1887 Dolphin Place  
Discovery Bay, CA 94514

Mr. Chet Loveland, President  
DBPOA  
220 Discovery Bay Blvd.  
Discovery Bay, CA 94514

Mr. Jack Albrecht, Secretary  
DBPOA  
5757 Marlin Drive  
Discovery Bay, CA 94514

Mr. Fred Bauer, Treasurer  
DBPOA  
1893 Seal Way  
Discovery Bay, CA 94514

Ms. Peggy McGrath, Director  
DBPOA  
818 Discovery Bay Blvd.  
Discovery Bay, CA 94514

Lee Paden, Director  
DBPOA  
1159 Discovery Bay Blvd.  
Discovery Bay, CA 94514

Mr. Tim Mustard, Director  
DBPOA  
5387 Willow Lake Ct.  
Discovery Bay, CA 94514

Re: Peter and Eleanor Racz  
5615 Sunfish Ct., Byron, CA

Dear Mr. Loveland:

I have been retained by Peter and Eleanor Racz to file an action to invalidate the present Covenants, Conditions and Restrictions and to remove the Notice of Assessment Lien which was unlawfully recorded against the above described property by you on July 31, 1997. Pursuant to the unlawful C.C.&R.s, the DBPOA has been levying illegal assessments and fines for over a decade and has illegally collected in excess of \$200,000.00 in so called "assessments", "dues", "liens", "fines", etc.

We intend to allege that the DBPOA, its officers, directors and legal counsel, have engaged in a fraudulent course of conduct in order to mislead property owners into believing that the current C.C.&R.s were legally adopted, and that all funds collected from the fraudulent levies must be disgorged and repaid to those who have been forced by DBPOA to make the levy payments.

Officers and Directors  
Discovery Bay Property Owners Association  
February 23, 1998  
Page 2

I previously represented Jim and Linda Hall in the Hall v DBPOA, (Contra Costa Sup. Ct) Case No. C88-01776. As you well know, in that matter it was shown through the deposition and court

Judge Phelan specifically found in his Statement of Intended Decision that the failure to sign and have

When Mr. Racz came to my office I was frankly shocked to find out that the DBPOA had continued, in the face of the Hall decision in 1989, to continue to mislead the property owners as to the binding effect of the C.C.&Rs since that time. It appears that no effort was made by DBPOA to correct the deficiencies noted by the Court and that the DBPOA felt it could continue to enforce its illegal C.C.&Rs as long as it did not get caught.

Of particular interest is the letter dated June 4, 1993 addressed to then DBPOA President Carl M. Hentschke from Curtis

Sproul of Weintraub, Genshlea & Sproul, counsel for the DBPOA. Although Mr. Sproul attempts to distinguish the Hall facts, he clearly states that there were discrepancies in the old set of C.C.&Rs that may not have been common in the context of other subdivisions. We both know this is not the fact. Mr. Sproul goes on to essentially state that even if the C.C.&Rs are illegal you can:

1. Take steps to make them binding (never done); or
2. Simply hope that no one else is willing to undertake the cost and expense necessary to challenge their validity.

The current C.C.&R.'s pertaining to the Racz property (and all other properties subject to the current C.C. & R.'s) are unlawful because:

1. The original C.C. & R.'s required that any modification or extension be accomplished only by recordation of an instrument "...executed by the owners of at least two-thirds (2/3) of the lots." No such document was ever recorded.

2. The Association itself did not have the authority to record the current C.C. & R.'s (assuming arguendo that the voting/petition drive adoption process was proper) because Discovery Bay is not a common interest development thus Civil Code, section 1355(a) was not applicable. In addition, the Association had no power to act on behalf of any property owner at any time until after the current C.C. & Rs were recorded, i.e. the Association could not record the current C.C. & R.'s because it had no power prior to the moment of recordation;

For further discussion of this matter I would direct you to Plaintiffs' Post Trial Brief (5:25-9:22) in the Hall matter and the Court's Statement of Intended Decision, (1:20-2:10);

3. The DBPOA was suspended by the Franchise Tax Board for the period from May 1, 1985 to March 18, 1986 this the DBPOA was utterly without the legal power to record any document and any officer or director purporting to exercise such power, was guilty of a misdemeanor.

In addition to the grounds for global challenge to the current C.C.&R's set out above, I believe that the adoption process for most, if not all, of the individual tracts is fatally defective for the following reasons:

4. The consent forms signed by the property owners failed to attach the current C.C.&R.'s and are fatally defective;

5. The consent forms mis-identified the C.C.&R.'s to be replaced and are fatally defective;

6. Many consent forms were signed by persons who were not the record title holders of the property as of the date of recordation of the current C.C. & R.'s;

7. Many consent forms were signed by property owners who inserted conditions therein before the consents were effective. The conditions were never met and the consents were invalid however the DBPOA chose to ignore the conditions and counted the consents in arriving at the 2/3rds vote necessary to pass the current C.C. & R.s;

8. Some DBPOA board members signed the names of property owners to the consent forms after allegedly receiving "verbal" consent from the property owner to sign his/her name;

The above list is demonstrative only and is by no means exhaustive of the reasons as to why the DBPOA is acting unlawfully in attempting to collect any dues or fees from property owners. In addition, my client is convinced that the DBPOA filed illegal State and Federal tax returns when it rolled the Design and Environmental Review Committee into the DBPOA without any accounting for the funds previously collected by the DERC which appear to have simply vanished. He is concerned that the DBPOA has committed felony tax fraud and refuses to be a member of a criminal organization.

At this point, in order to avoid litigation, the following demands are made:

A. The DBPOA immediately release any and all liens on the Racz property and on all other properties purportedly subject to the C.C. & R.s;

B. The DBPOA use all remaining funds to immediately repay those current or former property owners who were required to pay their "dues", "fines", "liens", etc. through the lien process or through escrow at the time of sale of their properties;

C. The DBPOA, under supervision of a receiver to be appointed by the Court, set up a claims process so that any

Officers and Directors  
Discovery Bay Property Owners Association  
February 23, 1998  
Page 5

property owner who desires a refund of his "voluntarily" paid dues/assessments, etc. be repaid those dues/assessments, etc.;

D. If the DBPOA refuses to agree to appointment of a receiver that my client and his designated agents be allowed to review all of the present and past DBPOA records to determine which current or former properties owners may be entitled to a refund and be allowed to contact each such property owner to determine if he/she desires a refund;

E. To the extent funds are unavailable for the above, the DBPOA notify is Errors and Omissions carrier of the claim so that appropriate distributions can be made;

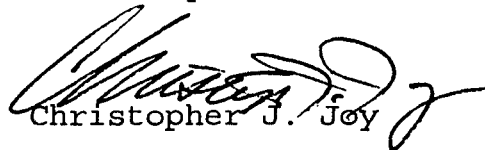
F. The DBPOA Mail a notice containing a copy of this letter to the last known address of all current and former property owners; and

G. Once all of the current and former property owners have been repaid, the DBPOA dissolve itself or otherwise cease all activities except those that might be agreed to by property owners on a purely voluntary basis, i.e. any C.C.&Rs to be recorded in the future be signed by all property owners willing to be bound by such new C.C.&Rs.

I want to make it very clear that I believe that the officers and directors of the DBPOA are personally liable for each dollar that has been previously collected from any property owner for any monies paid to DBPOA under the current C.C.&Rs. We will seek a judgment against the DBPOA and each of you individually should this matter not be immediately resolved.

Please send a written response to me no later than close of business, Friday, March 6, 1998.

Sincerely,

  
Christopher J. Joy

CC: Clients  
CJJ:jd