

**GOLD STRIKE HEIGHTS HOA v. FINANCIAL PACIFIC
INSURANCE et al**

CV34353

APPLICATION FOR ORDER FOR EXAMINATION

This case, and the associated actions, relate to the development and management of a master planned senior community commonly referred to as Gold Strike Heights. Before the Court this day is an opposed application for an order to examine debtors. Although the opposition is based essentially on the claim that the identified deponents do not possess any helpful information, there is much more to the story, warranting a review of this tortured history that is Gold Strike Heights.

Pertinent Background

In 2002, the subdivision's developer – Westwind Development, Inc. (hereinafter “Westwind”) – recorded CC&Rs describing Gold Strike Heights as a senior citizen housing development consisting of a Phase 1 (45 “buildable” lots with ordinary common areas) and a Phase 2 (43 “buildable” lots with ordinary common areas and a recreational area to include a clubhouse). The CC&Rs further established that the community would be governed by an elected board of directors and treated as a common interest development. Contemporaneous with the recording of the CC&Rs, Westwood incorporated the Gold Strike Heights Association (hereinafter “GSHA”) to eventually manage the community. Because Westwind advertised to Phase 1 buyers the “plan” to create a recreational area with clubhouse but refused to commit to actually developing Phase 2 (which included said clubhouse), Westwood was required to secure a performance surety bond from Financial Pacific Indemnity Company (hereinafter “Financial”) to cover costs associated with the clubhouse once Phase 2 was commenced.

Westwood built-out some of Phase 1, but abandoned the community before completion. GSHA was suspended by the Secretary of State, in conjunction with the Franchise Tax Board, 28 months later on 11/09/04. At the time of its suspension, the designated agent for GSHA was Frank Meagher.

In 2005 and 2006, Indian Village Estates, LLC (aka Mark Weiner), acquired ownership of thirty-one (31) undeveloped lots within the community, gaining majority control. Weiner caused to be incorporated on 05/15/07 a new governing association called Gold Strike Heights Homeowners Association, a nonprofit mutual benefit corporation (hereinafter “GSHHA-I”). Its purpose was to assume control over and manage, in perpetuity, the community. Five years later, the Board caused to be established Gold Strike Heights Homeowners Association, an unincorporated mutual benefit association

(hereinafter GSHHA-II). GSHHA-I was dissolved and liquidated, effective 08/13/15. GSHHA-II remains active, but has no designated agent.

Several lawsuits were filed, including but not limited to:

- *Lee v. Meager et al* (CV33942). Action as assignee to recover monthly HOA dues paid to Westwind despite obligation to deliver to HOA. Default judgment entered in favor of plaintiff, with a current principal owed of \$106,093.97.
- *GSHHA-I v. Westwind et al* (CV34900). Action by HOA to cancel deeds given by developer in alleged violation of obligation to transfer to HOA. Case resolved by voluntary dismissals and default set aside. Appeal dismissed (C071843).
- *Weiner v. Westwind* (CV35141). Action as assignee to recover on unpaid loans used to develop property within the community. Following a jury trial, plaintiff prevailed, and was awarded \$283,800.00 in damages plus \$41,295.00 in fees.
- *Village Concepts, Inc. v. GSHHA-I* (10CV36754). Action by putative property management company to affirm management agreement. Case voluntarily dismissed without litigation or appearances.
- *Lee v. Castelluccio et al* (10CV36874), *Indian Village Estates v. Castelluccio et al* (10CV37043), and *Cooper et al v. Weiner et al* (10CV37048). Consolidated actions involving alleged management wrongdoing and power grabs by and between various resident factions. Settlement agreement enforced and entered as judgment; affirmed on appeal (C068987).
- *Lee v. Financial Pacific* (10CV36902). Action seeking a declaration that the settlement reached in the consolidated actions was enforceable despite a mistake in the name of the obligee and alleged fraud. Anti-SLAPP motion granted; judgment entered for Financial Pacific; affirmed on appeal (C067418); Financial Pacific awarded \$7,532.75.
- *Lee v. Financial Pacific et al* (10SC6521). Small claims action filed to recover costs witness costs associated with earlier litigation. Plaintiff awarded \$158.00.
- *Lee v. GSHHA* (12CF10699). Limited jurisdiction case, voluntarily dismissed.
- *Lee v. GSHA and GSHHA* (15CV40732). Action for declaratory relief and emotional distress relating to HOA's decision to pursue nonjudicial foreclosures on properties owned by Weiner (and leased by Lee). The dispute was taken up as part of the GSHHA bankruptcy (15-90811), case herein was dismissed. Lee lost in the bankruptcy court, and was ordered to pay fees to the bankruptcy trustee. See *In re Gold Strike Heights Homeowners Association*, WL3405473 (9th Cir. 2018).

Lee's OEX in CV34353

In the case at bar, commenced on 01/09/08, GSHHA-I took aim at Westwind and Financial, claiming that Westwind was obligated to construct the recreational clubhouse, and that Financial was obligated to cover the expense of that construction, even though Westwind declined to build Phase 2. Although a jury found in plaintiff's favor, that result

was reversed following defendants' motion for JNOV. The Court of Appeal held as follows:

“We affirm the JNOV order because Westwind had no obligation to build the clubhouse until it started to build phase two of the subdivision. Westwind expressly disclaimed any obligation to build phase two, and indeed phase two was not built. Because the obligation to build the clubhouse was not triggered, Financial Pacific did not have to pay on the surety bond.” See C066240 and WL2866688 at *1.

Plaintiff sought – to no avail – both a rehearing in the DCA and a review in the CA Supreme Court. Thereafter, the parties briefed the issue of prevailing party fees and costs.

On 12/12/12 and 12/14/12, this Court entered judgment as follows:

- Against GSHHA-1, and in favor of Westwind: legal fees (\$107,800.00) and costs (\$6,458.13)
- Against GSHHA-1, and in favor of Financial: legal fees (\$51,000.00) and costs (\$17,732.08).

These judgments were never satisfied, and have since expired by operation of law. (See CCP §§ 683.020, 683.030, 683.130; *Starcevic v. Pentech Financial Services, Inc.* (2021) 66 Cal.App.5th 365, 381; *Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 502; *Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 201.) Although Lee has filed various court documents attempting to renew the judgments belonging to Westwind and Financial in this case, Lee is not “a judgment creditor” entitled to renew them. (CCP §§ 680.240, 683.110(c), 683.120(a), 683.140; in accord, *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 338 [“to obtain a renewal of the judgment, the judgment creditor must file an application for renewal with the clerk of the court”].) As such, the renewal of the judgments, entered 05/10/22, must be vacated sua sponte (see CCP §683.170) and the writ of execution rescinded.

Lee contends that his judgment against Westwind in CV33942 establishes a “levy” over the subject judgment, allowing him to renew that judgment. Not so. Although this Court granted Lee an EJM levy over Westwind’s judgment in this case, based upon a judgment Lee held against Westwind in CV33942, §700.190(b) merely provides Lee with “first dibs” to any money that Westwind might be trying to collect from GSHHA-1. Westwind never attempted to collect anything from GSHHA-1, and allowed that judgment to lapse. The “levy” does not renew or extend the judgment; it is merely one method by which Lee might have been able to monetize his own judgment. (See CCP §§ 683.020, 699.530(b), 701.070.) Since that option no longer remains, Lee must find another method to attempt to collect on his own judgment. However, Lee’s judgment secured in CV33942 was entered on 11/27/07, and based on a review of the court file never renewed. As such, it appears that neither judgment – CV33942 or CV34353 – remains enforceable. Either way, since Lee has already secured orders for examination

in CV33942, and has no standing to seek an order for examination in the case at bar (CV34353) – see CCP §708.110 [only judgment creditors can apply to examine debtors] – there is no basis for Lee to seek any examinations in this case. Finally, there is marked uncertainty as to who must be examined. Pursuant to CCP §708.150(c)(2)(A), Lee might be entitled to examine the last individual named as CFO (Paul Quent); however, Lee has previously advised that GSHHA-II is a successor of GSHHA-I, and as such then Lee’s examination right is limited to “a natural person identified by the judgment creditor as being familiar with the property and debts of the organization, together with an affidavit or declaration signed by the judgment creditor that sets forth the factual basis for the identification of the individual.” (CCP §708.150(c)(2)(D).) Lee has not provided a declaration establishing a basis to examine any individual in light of the recent bankruptcy proceeding in which all of the assets belonging to GSHHA-1 were inventoried, accounted for, and distributed.

Application for order of examination DENIED. The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.