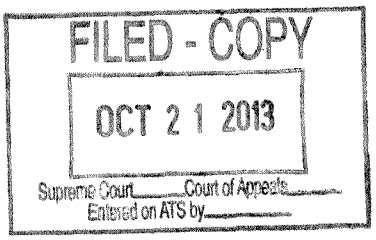
10-21-2013

Eagle Springs Homeowners' Ass'n, Inc. v. Herren Appellant's Brief Dckt. 41182

IN THE SUPREME COURT OF THE STATE OF IDAHO

EAGLE SPRINGS HOMEOWNERS' ASSN, INC., an Idaho Corporation, Plaintiff (Respondent), vs. NATHAN and MARYANN HERREN, Defendants (Appellant)	Supreme Court No. 41182



OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, In and For the County of Ada

HONORABLE KATHRYN A. STICKLEN
Presiding Judge

Nathan Herren
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Boise, Idaho 83714
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EAGLE SPRINGS HOMEOWNERS' ASSOCIATION, INC.
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Respondent

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No existing case law citations were required

STATE STATUTES

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal, following the district court's order on intermediate appeal, from Nathan and MaryAnn Herren's civil judgment concerning homeowners' association assessments levied from June 2009 to the legal action's submission date of April 1, 2011.

B. Factual Summary and General Course of Proceedings

Since September 2002, Mr. & Mrs. Herren lived in the Eagle Springs Estates subdivision and consistently paid homeowners' assessments to Eagle Springs Homeowners' Association, Inc., (hereafter the "Association") in a timely manner. On May 11, 2006 the Herren's requested the rental of the Clubhouse and were denied the rental. Subsequently, the Association sent a letter dated May 23, 2006 barring the Herren's from using any of the Association-managed common areas.

The Association, from May 2006 until present, a period exceeding 7 continuous years, has repeatedly failed and refused to notify the Herren family their common area privileges have been reinstated. *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-OC-2006-19092 (2008). The Herrens similarly refused to pay any further assessments under such unreasonable conditions. The Association brought this action to collect both regular assessments and an amount for a special assessment with penalties, accrued interest and court costs for the time period stated above. The Herrens timely appealed the decision of the small claims, Magistrate and District Courts.

III. ISSUES PRESENTED ON APPEAL

1. Whether recorded Eagle Springs Homeowners' Assn., Inc. project documents require a homeowner majority vote for regular assessment increases;

2. Whether unilateral regular assessment increases, those instituted by the Board of Directors without a homeowner majority vote, are valid and enforceable by the Association;
3. Whether Appellant owes the regular assessment increase when written notice was not given and a quorum of Members or of proxies entitled to cast 60% of the total votes of the Association and a homeowner majority vote was not held pursuant to the CC&R requirements specified in Article VII Assessments, 7.9 Special Notice and Quorum Requirements of the CC&R;
4. Whether Eagle Springs Homeowners' Assn., Inc. Board of Directors acted in good faith when calculating a regular assessment increase for specifically detailed reasons then used the entire increase solely for unpaid outstanding legal fees and further legal action—a cost justification for the increase they failed to disclose;
5. Whether Eagle Springs Homeowners' Assn., Inc. Board of Directors calculations for the regular assessment increase complied with the CC&R;
6. Whether Eagle Springs Homeowners' Assn., Inc. Board of Directors gave intentionally deceptive fiduciary statements to members of the association;
7. Whether the Board's notice of dues increase dated December 17, 2007 gave adequate notice as defined in the CC&R;
8. Whether the Board delivered the Fiscal Year 2008 budget 60 days prior to the fiscal year as mandated in the CC&R;

9. Whether the 60 day budget notice requirement is designed to allow sufficient time to call Special Meetings for homeowner votes in connection with regular assessment increases prior to the start of the next fiscal year;
10. Must the judgment be reversed as Respondent's are claiming assessments they released under a homeowner's association lien. Releasing said lien released Defendants of all accumulated assessments as described under Idaho Statute Title 45 Chapter 810 Section(2)(b) during the timeframe from the date of the lien's original filing through the date of its release;
11. Whether Appellant's must pay homeowner assessments under unreasonable common area privilege denial conditions, including, but not limited to, Respondent's refusal to notify Appellant's their common area privileges have been reinstated for a period beginning since May 23, 2006 until present and ongoing refusal to provide Appellant's with a key to access the common area pool and Clubhouse where Annual Homeowner and Board meetings are held;
12. Whether the Motion for Reconsideration was timely filed with the magistrate;
13. Whether public records, specifically, a Release of Lien filed by Respondent's and willfully withheld from evidence are subsequently admissible or information therein, such as the date of release and language publicly proclaiming a discharge of debt can be referenced on appeal;
14. Whether Respondent's submitted knowingly and willfully falsified assessment documents as valid evidence in this case, such as, an itemized billing history identifying

antedated charges as "Special Assessment" when said special assessment occurred months later;

15. Whether Respondent's action is frivolous, without merit and pursued solely for malicious reasons;

IV. ARGUMENT

A. This Court must vacate the District Court's Appellate Judgment as the Association's governing documents require a Special meeting called with an initial 60% attendance of the voting power in the Association to meet a quorum. A homeowner affirmative vote of the Majority of Members, defined as 51% of the Association's voting power, is required at said meeting to institute all regular assessment increases.

The District Court failed to consider all of the evidence as there are no references to the Association's Bylaws—except in quoting the Magistrate Court's decision—within the District Court's Memorandum Decision. The Bylaws were admitted into evidence as Exhibit A by Defendant's. Mag. Tr., p. 13, ln. 19. Plaintiff's Exhibit 8 was incomplete, in particular, it did not include any CC&R amendments demonstrating past Special meetings nor did it contain the Bylaws. Mag. Tr., p. 8, ln. 19 – 25. The Bylaws are an integral part of the Association's "Project Documents" as defined by the CC&R:

> 3.20 "Project Documents" shall mean the basic documents creating and governing the Property including, without limitation, ***this Declaration, Articles of Incorporation and Bylaws of the Association,*** the Association Rules, the Design Guidelines and any procedures, rules, regulations or policies adopted under such documents by an Association or the Architectural Committee. (Emphasis added)

It appears the district Court incorrectly referenced the incomplete Exhibit 8. Exhibit 8 did not contain any amendments. Each such amendment has within it language similar to:

> On <date>, Association held a special meeting where this Amendment was approved by the vote or written consent of Owners representing more than sixty-six (66) percent of the votes in the Association.

Consequently, the Association has, in the past, properly held special meetings as required but only to amend the Project Documents—never for a regular assessment increase or a special assessment.

The Bylaws section 2.2 defines a Majority of Members as:

> Section 2.2 Majority of Members. As used in these Bylaws, the term "Majority of Members" shall mean those ***Members representing fifty-one percent (51 %) of the voting power of each class of Membership*** in the Corporation. (Emphasis added)

The next Bylaws page, section 3.1, requires an affirmative Majority of Members vote in connection with establishing assessments:

> Section 3.1 Responsibilities. The Corporation shall have the responsibility of administering the Common Area owned and/or managed by the Corporation, if any, ***approving the annual budget, establishing and collecting all assessments, if any, and may arrange for the management of the same pursuant to an agreement, containing provisions relating to the duties, obligations, removal and compensation of the Manager, as defined below. Except as otherwise provided, decisions and resolutions of the Corporation shall require an affirmative vote of a Majority of Members present at an annual or special meeting of the Corporation at which a quorum is present or written consent of a Majority of Members of the Corporation.*** (Emphasis added).

Together, with the CC&R section 7.9 describing the meeting requirements. A special meeting must be called with a quorum in attendance and a Majority of Members affirmative vote:

> 7.9 Special Notice and Quorum **Requirements:** ***Notwithstanding anything to the contrary contained in the Project Documents***, written notice of ***any meeting called*** for the purpose of levying a Special Assessment, or for the purpose of obtaining a membership vote ***in connection with an increase in the Regular Assessment, shall be sent to all Members of the Association*** and to any person in possession of a

> Building lot in the applicable Phase, ***not less than fifteen (15) days nor more than thirty (30) days before such meeting***. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting. (Emphasis added).

Conclusion: Just as with amendments, special meeting, quorum and affirmative voting requirements exist for approving the budget as well as establishing and collecting assessments.

The magistrate court further noted the budget, resulting from the Board's unilateral regular assessment increase, was discussed at the 2008 Annual meeting held January 28, 2008 and concluded the notice for the Annual meeting met the notice requirements for an assessment installment payment. *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-SC-11-12458 (2011), p.3, (7). The magistrate confused the ***notice for a meeting*** with that of a ***notice of billing***. Exh. A. CC&R section 7.7. It is a notice of billing that has a 10-day requirement meaning it must be sent 10 days prior to the 1st day of each fiscal quarter. The notice for a meeting must comply with CC&R Section 7.9 detailed above.

The fiscal year, or assessment period, is defined to be from January 1 through December 31. Exh A., CC&R section 7.6. Moreover, the budget is required to be distributed 60-days prior to January 1. Exh A., CC&R section 5.7.1. This requirement accomplishes two goals: 1) It allows the Association sufficient time to call special meetings

to approve the budget prior to the start of the fiscal year, and 2) It eliminates conflicts of interest as the budget is established by the current board of directors with approval by a Majority of Members. That homeowner-approved budget will be binding on the newly elected board of directors at the next Annual meeting. This prevents a Board of Directors from arbitrarily increasing assessments mid-year at their whim such as was done with the keycard lock system in 2011.

The evidence shows, the budget was not distributed by the Board of Directors in 2007 as required:

> One owner asked why the budget was not mailed out to all owners in December as required by the CC&Rs. Exh. 5, p. 2.

Moreover, the 60% quorum requirement was not met at the 2008 Annual meeting. Annual meetings have a lower quorum requirement of only 30% to conduct the meeting. Exh. A. Bylaws Section 2.3. The minutes indicate:

> 70 in person or by proxy. Quorum is 69 so that was surpassed. Exh. 5, p. 1.

The primary purpose of the annual meeting is to elect new Board members. Consequently, the Annual meeting's minimal quorum cannot substitute for the more stringent requirements defined for special meetings and majority votes. While the minimal 30% quorum requirement for the Annual meeting will allow the meeting to go forward, it also limits the business that can be addressed. For example, if 60% are not in attendance, homeowner approval of any budget cannot even be on the agenda. It doesn't appear the actual number of members was ever formally introduced into evidence. However, the number can be gleaned

from Exh. 4 or Exh. C. from page 2: Multiply $138 times 4 then divide the resultant value into $127,275 yielding 230 plus a remainder. There are 230 homes in the Association and that equates to 230 member votes. Exh. A, CC&R Sections 5.2 and 5.3. The 2008 Annual meeting's quorum, at only 70 in attendance, was far short of the 138 required to approve any budget.

Conclusion: ***Discussing*** the budget at the Annual meeting is not prohibited but ***approving*** it without the appropriate quorum or attendance is prohibited. Moreover, the budget has to be approved prior to the start of the fiscal year as first quarter assessments are due and payable on January 1. Essentially, the magistrate concluded that approving a budget after its already instituted is acceptable when the totality of evidence indicates otherwise.

The magistrate court was inclined to agree it would be more democratic to hold special meetings and call a homeowner majority vote. Clearly, section 3.1 of the Association's Bylaws is directly analogous to Idaho Statute 45-810(7)(e):

> A provision providing that no fees or assessments of the homeowner's association may be increased unless a majority of all members of the homeowner's association vote in favor of such increase.

Conclusion: Just as the legislature intended, the magistrate's ruling should have followed his inclination as it was clearly correct even as his conclusions of law were not. Because a Board meeting took place on December 17, 2007 wherein only Board members voted in connection with an increase in the Regular Assessment and the Board failed to call a meeting that complies with the Special Notice and Quorum Requirements defined in section

7.9, the judgment must, therefore, be vacated. The magistrate court properly referenced all of the evidence but merely overlooked these critical sections of the Bylaws. Both courts presumed a special meeting and quorum were "optional" and "rare". The evidence shows they are neither optional nor rare. In fact, the special meeting, quorum and voting requirement is the decidedly democratic norm. Hence, the judgment must be vacated.

B. Because the Association released a lien, this Court must vacate the District Court's Appellate Judgment.

Homeowners' Association liens are different from other general liens—a difference explained in Idaho Statute 45-810(2)(b):

> When a claim has been filed and recorded pursuant to this section and the owner of the lot subject to the claim thereafter fails to pay any assessment chargeable to such lot, then so long as the original or any subsequent unpaid assessment remains unpaid, ***such claim shall automatically accumulate the subsequent unpaid assessments without the necessity of further filings*** under this section. (Emphasis added)

It directly follows from the statute that releasing said lien releases all unpaid assessments beginning with the original filing date up to and including the date of its release. The testimony shows the lien was released in January 2010. Mag. Tr. P. 108, ln. 7. The release of the lien is undisputed. Mag. Tr. p. 89, ln. 21 - 22. The actual day within the month it was released was not properly introduced into evidence and therefore cannot be considered from the evidence directly. Irrespective of this, January 1, 2010 fell on a weekend when the County Recorder's office is closed. The association's first quarter assessment payment is due January 1. Releasing the lien any day following January 1 also released the Herren's obligation to pay the same year's first quarter assessments. The evidence shows the Association is obligated to refund the Herrens Jan 6, 2010 payment of $100 incorrectly logged as a "partial payment". In fact, it was on ***overpayment***. Exh.

1. Neither the magistrate nor the district court understood the homeowners' association lien statute—one that has existed for over 10 years.

Additionally, consider Exh. A of the CC&R section 8.2.2:

> Claim of lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, ***the Association may cause to be recorded in the office of the Ada County Recorder a claim of lien***. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. ***Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges.*** The Association may demand and receive the cost of preparing and recording such release before recording the same. (Emphasis added)

Conclusion: All assessment amounts claimed by Plaintiff's from June 2009 up to the second quarter of 2010 were released by the Plaintiff's directly. The magistrate court failed to consider a valid defense incorrectly concluding the Herrens were obligated to pay an assessment debt that had already been fully and publicly discharged. Moreover, by releasing the lien after receiving the correct regular assessment payment of $100 per fiscal quarter, the Association implicitly acknowledged the Herren's payments met the levied regular assessment requirements.

C. **Because the Association has consistently failed and refused to notify the Herren's their common area privileges have been reinstated—a refusal arguably based solely in malice—the Association has no valid justification for assessing the Herrens any amount whatsoever.**

The evidence shows, following the ruling in case *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-OC-2006-19092 (2008) the Association has continued to be

antagonistic toward the Herrens' vehicle parking. The Association repeatedly sent notices of CC&R Compliance Inspections and logging "no vehicles or trailers shall be permitted to remain on any lot unless within the confines of a garage for a period exceeding 72 hours..." Exh I. Yet, the ruling very clearly states:

> Thus, the ***Herrens are not in violation of the CC&R by parking their tent trailer in their driveway. There is no question that the Association believes this to be a violation, as do other homeowners***, but restrictions on the use of property must be narrowly construed and Section 4.9 simply does not contain such a specific prohibition. (Emphasis added)

The Association had numerous opportunities to notify the Herrens their common area privileges were reinstated yet simply refuses to do so. Exh. 9. That notice did not follow either the Satisfaction of Judgment in 2009 or the Release of Lien and subsequent overpayment of assessments in 2010. It appears the Association's goal is to keep the Herrens from using the common area *in perpetuity* while simultaneously falsely claiming they are behind on assessments. Mag. Tr. p. 88, ln. 21 – p 89, ln. 2. Clearly, the Board of Directors has refused to accept the depth and breadth of the ruling. Moreover, the evidence reveals the Board of Directors—apparently emboldened by the hiring of a new legal firm—continue to violate the Conclusions of Law contained therein even citing rulemaking authority that it does not possess. Exh. G. p. 1, p. 2 ("The Association is authorized by Article V, Sections 5.6.1.4 and 5.6.2.7 of the Declaration and Article IV, Section 4.3, paragraph (k) of the Bylaws to adopt rules and regulations."). Contrast with:

> ***The Board cannot expand the CC&R through its rulemaking authority***. (Emphasis added) *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-OC-2006-19092 (2008), p. 12, ln. 13.

And its footnote:

> Both parties also refer to section 9.3.2 which gives the Architectural Committee the authority to promulgate rules. ***But the authority is as to design elements and does not allow the Architectural Committee to rewrite, expand or clarify the CC&R in other areas***. (Emphasis added)

Conclusion: The Board cannot enact any new rules, regulations or so-called "resolutions" on its own. Citing the ***Association's*** authority then usurping it as the ***Board's*** authority without pursuing the requisite Majority of Members votes is fraudulent. Yet, the evidence reveals that is precisely what the Board of Directors has done as if merely hiring a new legal firm magically overrides the existing Conclusions of Law—conclusions the Association pursued, failed and refused to appeal and now refuses to abide by. Moreover, the Bylaws mandate said vote in "...***establishing and collecting all assessments...***" (Emphasis added) Exh. A. Bylaws Section 3.1.

D. **The Court must vacate the judgment as the Board of Directors fraudulently implemented a regular assessment increase of $30 per quarter in fiscal year 2008 to fund the trial detailed in** *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-OC-2006-19092 (2008). **It again fraudulently billed owners a one-time special assessment of $50 in fiscal year 2011 to fund an electronic keycard system. The purpose of which is to bypass the existing court ruling and deny homeowners their easement of access and easement of enjoyment rights to the common area without due process.**

While no evidence was properly introduced concerning the specific fraudulent sections of the regular assessment increase, there are elements to it that are tangible and known. Inherent to the legal profession itself, it is known trials require preparation time, depositions, discovery and motions in addition to the time spent before the Court—time that must be compensated for monetarily. Unlike a *pro se* appellant, time costs money in the real legal world. For a non-profit corporation such as the Association, the primary source of income is assessments. Homeowners are charged fees and the Association hires legal representation with those fees. All of this can be gleaned solely

from the fact a ruling exists wherein legal representatives of the Association initiated legal action targeting the Herrens. How important was that legal action to the Board of Directors?

> ***Legal fees incurred by the Association in 2007 were $2,201***. The Board has budgeted $5,000 for legal fees in 2008. The Board felt it was necessary to take this action ***or the CC&Rs would become meaningless***. (Emphasis added) Exh. 5. p. 1, Report of Officers.

Here we see the planned legal fee expenditures from 2007 to 2008 nearly doubled. This increase is not mentioned anywhere in Exh. C. As a legal professional, it's no stretch in logic to see $5,000 isn't going to cover the full legal expenses involved in a 2-day trial. The Board willfully hid from homeowners the actual legal expenses planned. If the Board did this once, might they do the same thing again? The magistrate's ruling and Plaintiff's testimony proves the Board of Directors fraudulently charged each owner $50 for a keycard system as a Special Assessment. In particular, the prerequisite for any special assessment is:

> 6) The CC&R give the Board of the Association authority to levy a Special Assessment when the Regular Assessment "is or ***will be inadequate to meet the Expenses of such Association for any reason*** ... "(Ex 8 and A, 7.4.1) (Emphasis added)

Plaintiff's testified they "project at the end of this year we will have $46,000 in the bank" Mag. Tr., p. 30, ln. 11 – 16. Clearly, the Special Assessment at only $11,500 (calculated at $50 times 230 homes) was instituted while the Association's financial obligations were never in jeopardy. Special assessments are, by design, intended to cover emergency funding shortfall situations. They cannot be planned months in advance. The Association, at all times in 2011, was able to more than meet its financial obligations from regular assessments; otherwise, there wouldn't be a $46,000 surplus projected by the end of the year. Plaintiff's testified there was 10% of the annual budget in savings. It's no small revelation nor is it by accident that the 10% of 2011's $119,600 annual expenses, more formally, $11,960.00, covered the cost of the keycard system in entirety for all Owners. Why, then,

did the Board pursue a special assessment, one which arguably amounts to unjust enrichment, at all? The evidence reveals that it was all about avoiding compliance with the Conclusions of Law contained within *Eagle Springs Homeowners Association Inc v. Herren*, Ada County Case No. CV-OC-2006-19092 (2008). In particular, notice the footnote at the bottom of page 4 and 5:

> Section 6.1.2 allows the Association to suspend the right to use the common area for non-payment of assessments, or "for any infraction of the Association rules." While it is not specifically germane to the dispute before this Court, ***it appears that violations of the CC&R related to a homeowners' maintenance of his own property is not a basis for denying common area privileges***. (Emphasis added)

Now we begin to see the Board of Directors true motivations behind the Special Assessment. In every way, from every angle, the Board refuses to abide by the Court's ruling. Instituting a keycard system has but one goal behind it—a goal detailed in the ***mandatory*** keycard agreement's fine print:

> By signing below I acknowledge receiving, reading, and understanding Eagle Springs Community Clubhouse and Pool Rules and Regulations provided herein, and agree to abide by said rules. I will not allow any child or guest under the age of 13 to go to the pool without an adult 18 years or older. I fully understand the consequences and accept all liability if any member of my family or a guest does not abide by these rules set forth. ***I understand that if my association fees are not current or if I have not remedied a CC&R violation as noticed, my clubhouse & pool privileges will be revoked.*** I understand that if I lose my key card, the replacement cost for a new card will be $50 and the lost card will be voided.

Conclusion: The Association's Board of Directors refuse to call any special meetings and seek Majority of Members homeowner votes over assessment increases. The Board fraudulently claimed a Special Assessment was necessary when it knew the money to cover the keycard system's cost was always available from the savings account the entire year of 2011. Clearly, this materially harmed homeowners to the tune of $11,500. The Board is fully aware of this ruling and its contents and specifically designed a keycard agreement, mandated its signature and fraudulently demanded $50 from homeowners.

V. CONCLUSION

Homeowners within the Association are being materially harmed by an unscrupulous Board of Directors that consistently refuses to embrace a required democratic approach to nearly every aspect of the Association's business. Pardon my comparison, but, they have become the Ted Cruz of the Association willing to thwart every democratic process just to maintain their perception of authority that then never possessed in the first place. As has been definitively proven herein, they cannot get their way unless they fool or force homeowners into accepting them as the sole authority over the Property (as defined in the CC&R). The keycard form proves it. Therefore, Mr. Herren respectfully moves the Court to vacate the lower court's judgment find the Herrens owe no further homeowners' assessments until such time the Eagle Springs Estates Homeowners' Assn., Inc formally notifies the Herrens their common area privileges have been restored. Finally, the Herren's respectfully move the Court for a summary judgment.

Respectfully submitted this 21 day of October, 2013.

Nathan Herren

Nathan Herren
Defendant Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of October, 2013, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to:

Eagle Springs Homeowners' Assn, Inc
2976 E. State Street #120 PMB #431
Eagle, ID 83616

✓ U. S. Mail
_____ Hand Delivery
_____ Overnight Mail
_____ Facsimile
_____ Certified Mail

Nathan Herren Defendant Pro Se