

11-18-2013

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

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IN THE SUPREME COURT OF  
THE STATE OF IDAHO

EAGLE SPRINGS HOMEOWNERS'  
ASSOCIATION INC.,

Plaintiff/Respondent,

v.

NATHAN and MARYANN HERREN,

Defendants/Petitioners/Appellants.

Ada County District Court  
No. 2011-12458

Docket No. 41182-2013

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE HONORABLE PRESIDING DISTRICT JUDGE KATHRYN A. STRICKLEN

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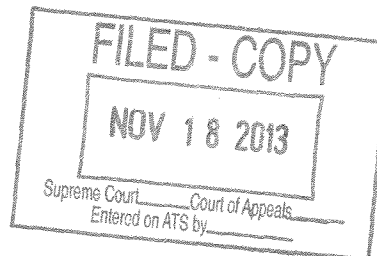
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*Griffith v. Rittenhouse Park Cmty. Asso*, 215 N.J. Super. 444 (1986).

*Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc.*, 139 Idaho 699, 85 P.3d 675  
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*Sun Valley Ctr. for the Arts & Humanities, Inc., v. Sun Valley Co.*, 107 Idaho 411, 690 P.2d 346  
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*Idaho Code Ann.* § 30-3-40 (2010)

PLAINTIFF-RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

A. INTRODUCTION AND COURSE OF PROCEEDINGS BELOW

This case was initially brought by Respondent Eagle Springs Homeowners' Association, Inc. (the "Association") to collect delinquent homeowner association regular and special assessments against Petitioners Nathan and Maryann Herren (the "Herrens"). *See R. Compl.* The Herrens refused to pay certain amounts assessed by the Association and its Board of Directors, arguing that the Association and its Board improperly increased the regular assessment amount without a vote of the members, and that the increase is not enforceable. *Tr.*, p. 126. L. 6. *R. Judgment and Findings of Fact and Conclusions of Law* at 3-4.

A judgment was entered in this case against the Herrens in small claims court for the delinquent regular and special assessments. *R. Judgment* at 1. The Herrens appealed the decision to the magistrate court. After a trial *de novo*, the magistrate court found in favor of the Association on the issue of past due regular assessments, denying the Association's claim for special assessments on technical grounds, and entered judgment against the Herrens for past due regular assessments, late fees, interest and court costs. *R. Judgment* at 1. The Herrens then appealed the magistrate court's decision to the district court. The district court entered a Memorandum Decision and Order and Appellate Judgment May 23, 2013, affirming the magistrate's decision. *R. Memorandum Decision and Order and Appellate Judgment* at 1. In its Memorandum Decision the district court held that the Herrens' assertion that they are not

required to pay the assessment is without merit, because 1) the Herrens' assertion that 60% quorum and owner vote of the majority of members is required to increase regular dues was without merit and 2) a meeting of the members is not required in order to increase regular assessments. *Id.* at 8, Further, the district court held that the Herrens' assertion that the Association did not act in good faith was not properly raised before the magistrate and is contradicted by evidence in the record. *Id.* at 8-9.

The Herrens filed a notice of appeal to the Idaho Supreme Court on July 3, 2013 containing nearly the same arguments raised in their district court appeal, many of which are based on evidence not part of the record, and providing their own interpretation of the Association's governing documents, unsupported by any case law. Although the Herrens' have been notified by the district court that the court does not consider new evidence, but only reviews the record created in the lower court, the Herrens' continue to base their argument largely on new evidence inadmissible on appeal. *Order Denying Motion to Admit Evidence of Fraud and Malicious Intent* at 1.

The issue on appeal is whether the District Court properly concluded that a meeting of the members and vote of the members was not required to increase the regular assessments pursuant to the governing documents of the Association. The district court correctly held that a meeting of the members and vote of the members is not required to increase regular assessments or levy a special assessment under the Association's governing documents. *R. Memorandum Decision and Order and Appellate Judgment* at 1, 8-9. The lower courts have properly concluded that the Association has met its burden of proof and is entitled to judgment against the Herrens

for the regular assessments that it levied.

## **B. SUMMARY OF FACTS**

1. The Association is an incorporated association of homeowners, organized under the laws of the State of Idaho to administer and enforce the Declaration of Covenants, Conditions and Restrictions of Eagle Springs Subdivision (“Declaration”), recorded in the Records of Ada County as Document 95074402. Copies of the Declaration were admitted into evidence at trial as Exhibits 8 and A. *See Tr., Ex. 8 and Ex. A, and R. Findings of Fact and Conclusions of Law, p. 1.*
2. The affairs of the Association are conducted and managed by a Board of Directors, duly elected by the Association members pursuant the Declaration and the Association’s Bylaws. *Tr., Ex. 8 and Ex. A, Sections 5.5 and 5.6.* The Board is charged with and granted the power to collect and enforce the provisions of the Declaration and the Bylaws, including the power to levy assessments against owners and enforce payment of such assessments. *Tr., Ex. 8 and Ex. A, Section 5.6.1.*
3. The Herrens were and are now the owners or reputed owners at all material times of the fee simple title in and to the following described real property in Ada County, State of Idaho, commonly known as 10485 W. Sawtail Street, Boise, Idaho 83714 (“Property”). *R. Findings of Fact and Conclusions of Law, p. 1. Tr., p. 100, L. 4.*
4. The Property is located in the Eagle Springs Subdivision and is subject to the Declaration. *Id at 1. Tr., p. 100, L. 4.*

5. As owners of the Property, the Herrens are also members of the Association. *Tr., Ex. 8 and Ex. A, Section 5.2.*
6. The Declaration provides that all owners are obligated to pay common expenses assessed against them as determined by the Board of Directors on behalf of the Association. *R. Findings of Fact and Conclusions of law, p. 2. Tr., Ex. 8 and Ex. A, Section 7.3.1.*
7. The regular assessment amount is determined by the Board of Directors, based on the Association's expenses. The method of calculation is outlined in Sections 7.3.2 and 7.3.3 of the Declaration. *R. Findings of Fact and Conclusions of law, p. 2. Tr., Ex. 8 and Ex. A, Sections 7.3.2 and 7.3.3.*
8. At its December 17, 2007 Board Meeting, the Board determined that the regular assessment amount of \$100 per quarter was not sufficient to satisfy the budget requirements and proposed an increase in the regular assessments from \$100 per quarter to \$130 per quarter. *R. Findings of Fact and Conclusions of law, p. 3. Tr., p. 28, L. 19.*
9. At the annual meeting of the members, held January 28, 2008, the proposed increase was discussed by the Board. *R. Findings of Fact and Conclusions of law, p. 3. See Tr., p, 28, L. 17, and Ex. 5.*
10. After Board approval and member discussion, all owners, including the Herrens, were properly assessed the \$130 regular assessment and sent proper notice of the assessments. *R. Findings of Fact and Conclusions of law, p. 3. See Tr., p, 43, L. 20, and Ex. 5.*
11. Proper notice of the increase was given to all owners. *R. Findings of Fact and Conclusions of law, p. 3. See Tr., p, 38, L. 9, and Ex. 4.*



12. The Herrens failed and refused to pay the assessment increase from August 18, 2009 through the end of 2010, equal to six quarters of assessment increases, or \$180. Also, the Herrens failed and refused to pay any assessments in 2011. *See R. Findings of Fact and Conclusions of law*, p. 3. *Tr.*, p. 22, L. 8. *Tr.*, p. 26, L. 13. *Tr.*, p. 90, L. 19. *Tr.*, p. 117, L. 24 and *Ex.* 1.
13. Despite demand made to the Herrens, the amounts remain unpaid. *Tr.*, p. 26, L. 13, and *Ex.* 1.
14. In addition, the Herrens owe late fees equal to 10% of each delinquent quarterly assessment and interest at the rate of 18% per annum. *R. Findings of Fact and Conclusions of law*, p. 4. *Tr.*, *Ex.* 8 and A, Section 7.7, and *Ex.* 1
15. The Herrens are also responsible for all costs of collection, including court costs, pursuant to the Declaration. *Tr.*, *Ex.* 8 and A, Sections 7.1.2, 7.5, and 8.1.

## II. ADDITIONAL ISSUES PRESENTED ON APPEAL

In the Herrens' Statement of the Case, in their Opening Brief to the Supreme Court, the Herrens continue to assert that they have refused to pay assessments in response to the Association denying the Herrens' certain common area privileges. *R. Opening Brief of Appellant*, p. 2. *Opening Brief of Appellant to the Supreme Court* at 1. Issues relating to the withholding of common areas privileges are not before the Court. The magistrate court properly precluded these issues, stating that they were not relevant to the Association's claim. *R. Findings of Fact and Conclusions of Law* at 5. *Tr.* p. 134, L. 19. The Herrens cite to a prior

magistrate court case, not currently on appeal, which should not be considered at this time. *R. Opening Brief of Appellant* at 2.

In the Herrens' Issues Presented on Appeal, the Herrens raise several issues not decided by the lower court, and that should therefore also be precluded. *Opening Brief of Appellant to the Supreme Court* at 1-4. The only issues before this Court are those related to whether the District Court properly concluded that a majority vote of the members and meeting of the members are not required to increase regular assessments or levy a special assessment under the Association's governing documents. *R. Memorandum Decision and Order and Appellate Judgment* at 1, 8-9.

### III. STANDARD OF REVIEW

When reviewing a decision of a district court that is acting in its appellate capacity, an appellate court should review the decision of the district court, rather than focusing on and directly addressing the decision of the magistrate court. *Losser v. Bradstreet*, 183 P.3d 758, 760 (Idaho 2008). A district court acting in its appellate capacity is required to determine whether there is substantial evidence to support the magistrate's findings of fact and reviews the magistrate's findings of law *de novo*. *Hentges v. Hentges*, 115 Idaho 192, 194 765 P.2d 1094, 1096 (Idaho Ct. App. 1988). A reviewing court must then "examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's finding of fact and whether the magistrate's conclusions of law follow from those findings." *State v. Garcia-Pineda*, Idaho Ct. of App., Docket No. 39782, 2013 Opinion No. 21 (2013). If

these factual findings and legal conclusions are adequately supported by the record and applicable law, and “if the district court affirmed the magistrate’s decision, [the appellate court] affirm[s] the district court’s decision as a matter of procedure.” *Id.*; *Losser*, 183 P.3d at 760.

## ARGUMENT

### A. THE DISTRICT COURT CORRECTLY HELD THAT THERE IS NO REQUIREMENT FOR A VOTE OF THE MEMBERS TO INCREASE THE REGULAR ASSESSMENTS

The issue on appeal is whether the Association’s Declaration requires a vote of the members to increase regular assessments. *R. Findings of Fact and Conclusions of Law*, p. 3. The Herrens incorrectly rely on Section 7.9 of the Declaration, which discusses special notice and quorum requirements, in arguing that a vote of the members is required to increase regular assessments. *See Id. R. Opening Brief of Appellant*, p. 2-4. *Tr.*, p. 35, L. 4. The District Court rejected the Herrens’ argument, as did the Magistrate Court, and correctly determined that the Association and the Board may increase regular assessments without a vote of the members. *See R. Findings of Fact and Conclusions of Law*.

In support of its determination, the District Court referred to Sections 7.3.2 and 7.3.3 of the Declaration, which provide that the regular assessment amount shall be computed by the Board and determined by the Association’s projected expenses on an annual basis. *See Id. Tr.*, *Ex. 8* and *Ex. A*. The Declaration and Bylaws specifically provide the Association and its Board authority to establish and collect assessments against members of the Association. *Tr.*, p. 30, L. 17, and *Ex. 8* and *Ex. A*, Sections 7.3 and 8.1. The District Court’s decision is consistent with the Declaration and the Bylaws and should be affirmed.

Furthermore, in contradiction to the relevant standard of review for cases of this type, the Herrens' Opening Brief focuses entirely on the decision and findings of the Magistrate Court, rather than the decision of the District Court, whose opinion is being appealed. Rather than discussing whether there was substantial evidence for the District Court's opinion, the Herrens have simply restated the same arguments asserted originally in the Magistrate Court, none of which is supported by or based on relevant case law or statutes.

**1. The Declaration governs the Association, including the collection and enforcement of assessments.**

The covenants, condition and restrictions in the Declaration run with the land and are binding on any person owning property within the subdivision. *Tr., Ex. 8 and Ex. A, Article II and Section 8.1. See West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005); *Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc.*, 139 Idaho 699, 85 P.3d 675 (2004); and *Sun Valley Ctr. for the Arts & Humanities, Inc., v. Sun Valley Co.*, 107 Idaho 411, 690 P.2d 346 (1984). The Declaration provides that its provisions shall be interpreted in such a manner that will protect, enhance and preserve the value, amenities, and attractiveness of the property. *Tr., Ex. 8 and Ex. A, Sections 1.2 and 15.6.* Each owner by acceptance of a deed to property in the Subdivision is a part-owner of the commons property in the subdivision and a member of the Association with certain legal duties and obligations, including the obligation to pay assessments. *Tr., Ex. 8 and Ex. A, Sections 5.2, 5.6, 7.1 and 8.1. Idaho Code Ann. § 30-3-40* (2010). Each such assessment shall be the personal obligation of the owner of such property. *Tr., Ex. 8 and Ex. A, Section 7.1.2.*

Assessments are necessary for the Association to function. Assessments are what allow the common property to be maintained, property values bolstered, and other Association obligations to be met:

“Regular Assessment shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Area and all improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association which is levied against the property of and to be paid by each Owner to the Association pursuant to the terms hereof.”

*Tr.*, Ex. 8 and Ex. A, Section 3.22.

The affairs of the Association are conducted and managed by a Board of Directors, duly elected by the Association members pursuant the Declaration and the Association’s Bylaws. *Id.*, Sections 5.5 and 5.6. The Board is charged with and granted the power to enforce the provisions of the Declaration and the Bylaws, including the power to establish assessments against owners and enforce payment. *Id.* Section 5.6.1. By acceptance of a deed to property within the subdivision, the Herrens, and their neighbors, covenanted and agreed, to pay all assessments established by the Board.

**2. The Herrens incorrectly rely on Section 7.9 in arguing that a vote of the members is required to increase regular assessments.**

The Declaration should be read in its entirety. The Herrens rely on Section 7.9 only and neglect to address other provisions of the Declaration reviewed by the Court in reaching its conclusion. *R. Findings of Fact and Conclusions of Law*, p. 3; *R. Opening Brief of Appellant*, p. 2-4. *Tr.*, p. 35, L. 4. Section 7.9 of the Declaration outlines special notice and quorum requirements, and identifies that a special meeting *may* be called for the purpose of obtaining a

membership vote for an assessment increase, among other things. *Tr.*, *Ex. 8* and *Ex. A*. However, nothing in this Section, or anywhere else in the Declaration or Bylaws, requires a membership vote for a regular assessment increase.

In fact, the Declaration does not provide a set amount for regular assessments, but provides that regular assessments shall be computed by multiplying the Association's estimated expenses by the number of building lots in the subdivision. *Id.*, Section 7.3. *Tr.*, p. 27-31. Provided the given method of computation the assessments may vary from year to year. The magistrate court correctly determined that the computation of the regular assessments is governed by Sections 7.3.3, not 7.9 and that an increase in assessments was properly determined based on the Association's expenses. *Tr.*, *Ex. 8* and *Ex. A*. *See R. Findings of Fact and Conclusions of Law*, p. 3-5.

Although the members did not vote on the regular assessments, the Association involved the owners in their decision, and did not attempt to deceive the members as purported by the Herrens in their opening brief. *R. Opening Brief of Appellant*, p. 3. In fact, the Association openly discussed the increase at Board meetings open to all members and at the 2008 annual meeting of the members. It was determined that an increase was in the best interest of the Association and that without an increase the Association would not be able to properly maintain the property, which would decrease property values. *See Tr.*, p. 28-34. After the Board approved the regular assessment amount, notice was sent to all owners, including the Herrens. *R. Findings of Fact and Conclusions of law*, p. 3. *See Tr.*, p. 43, L. 20, and *Ex. 4* and *Ex. 5*.

The Board of Directors is made up of unpaid volunteers who are elected by the members of the Association to enforce the Declaration and to make decisions on behalf of the Association. *Tr.*, *Ex.* 8 and *Ex.* A, Sections 5.5 and 5.6. The Board has discretion in determining the Association's expenses and computes the annual assessments to satisfy those expenses. The Board has performed their duties in good faith, with the care of an ordinarily prudent person in a like position under similar circumstances, and in the Association's best interest. *Idaho Code Ann.* § 30-3-80 (2010). *See, e.g. Griffith v. Rittenhouse Park Cmty. Asso*, 215 N.J. Super. 444, 451-454 (1986). The Declaration does not grant members the right to withhold assessments if they disagree with decisions of the Association, or actions of the Board. If the Herrens do not agree with the Board's action, their remedy is not to withhold assessments, but to participate in the democratic process and elect new Board members. *Id.* at 451-454.

In Part B of the Herrens' Brief, they argue that the Association's action to collection unpaid assessments against the Herrens was based in malice because the Association pursued collections to satisfy specific complaining homeowners, and not to satisfy the Association's collection procedures. Nothing in the record supports the Herrens' argument. The Association and its Board is legally responsible for enforcing the covenant to pay assessments against all owners, as they have done in this case. *Tr.*, *Ex.* 8 and *Ex.* A, Section 5.6.1. The Herrens are not exempt from this mutual obligation among owners to pay assessments or from the Association's enforcement action. *See e.g. Griffith v. Rittenhouse Park Cmty. Asso*, 215 N.J. Super. 444, 451-454 (1986). The Board has a duty to evenhandedly and diligently collect assessments from all of the members. If one member fails to pay, the burden will have to be carried by the rest of the

association. When a culture of nonpayment is allowed to flourish, it may prevent the association from functioning at all.

**B. THE DISTRICT COURT CORRECTLY HELD THAT THE ASSOCIATION IS ENTITLED TO JUDGMENT AGAINST THE HERRENS FOR DELINQUENT ASSESSMENTS**

The Herrens continue to assert that they are not responsible for the increase in assessments. However, the Herrens admit to owning their Property, which is located in the Subdivision and subject to the Declaration, and to not having paid all regular assessments levied by the Board, regardless of whether they agree with the amount charged. *Tr.*, p. 90-91, 100, 118-119, and *Ex. 8* and *Ex. A*. Accordingly, the District Court properly entered judgment for the Association against the Herrens.

In an action to collect assessments under the Declaration and Idaho law, there are few material facts that an association must prove: that the debtor purchased property subject to the declaration, that the debtor was the owner of title when the assessments became due, and that the debtor failed to pay the assessments. *West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005); *Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc.*, 139 Idaho 699, 85 P.3d 675 (2004); and *Sun Valley Ctr. for the Arts & Humanities, Inc., v. Sun Valley Co.*, 107 Idaho 411, 690 P.2d 346 (1984).

The Herrens purchased the Property subject to the Declaration and were and are now the owners of title to the Property when the assessments became due. *Tr.*, p. 99-100, *Ex. 1*, *Ex. 8*, *Ex. A*. The Herrens admit to these facts. The Herrens also admit to not paying certain assessment amounts referred to in Plaintiff's Exhibit 1. *Tr.*, p. 99-100, *Ex. 1*, *Ex. 8*, *Ex. A*. The



Association has not received any payments from the Herrens since October 22, 2010. *Tr.*, p. 22-25, *Ex.*, 1. *Despite* demand, the amounts remain unpaid. *See Id.*

The Declaration provides that each owner is subject to the covenants and restrictions set forth in the Declaration, including the covenant to pay assessments. *Tr.*, *Ex.* 8 and *Ex. A*, Sections 7.1 and 8.1. Pursuant to the Declaration the Herrens must pay assessments: “By acceptance of a deed to any Building Lot in Eagle Springs, each Owner of such Building Lot thereby covenants and agrees to pay when due all Assessments or charges made by the Association...” *Tr.*, *Ex.* 8 and *Ex. A*, Section 7.1.

The Declaration also provides that owners, in addition to the regular assessments, are personally responsible for late charges equal to 10% of each delinquent regular assessment, interest at the rate of 18% per annum, costs and attorneys’ fees. *Tr.*, *Ex.* 8 and *Ex. A*, Sections 7.1, 7.7 and 8.1. *See R. Judgment and Findings of Fact and Conclusions of Law.*

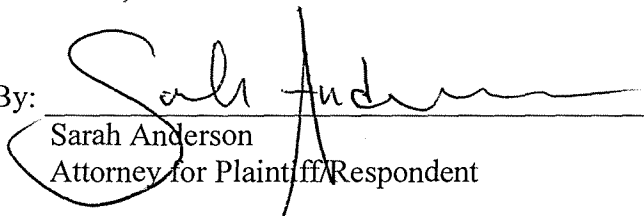
The costs incurred because of an owner’s refusal to pay should not be borne by the other neighbors. Rather, the governing documents explicitly assess the noncompliant owner with the costs of any legal action. *Tr.*, *Ex.* 8 and *Ex. A*, Sections 7.1, 7.7 and 8.1.

The District Court correctly held that the Herrens must now pay the assessments that fell due while they owned the Property, along with the violation fines, late charges, interest, costs and attorneys’ fees that have been assessed against them.

**IV. CONCLUSION**

For all the reasons set forth above, the lower court's decision and judgment should be affirmed.

DATED this 10 day of November, 2013.

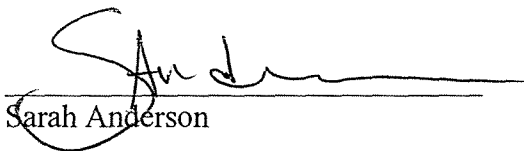
By:   
Sarah Anderson  
Attorney for Plaintiff/Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that I sent true and correct copies of the **RESPONDENT'S BRIEF** via United States Postal Service first class mail to the following:

Nathan and Maryann Herren  
10485 W. Sawtail Street  
Boise, ID 83714

DATED this 10 day of November, 2013.

  
Sarah Anderson