

Filed JUL 24 2009  
ROSA JUNQUEIRO, CLERK  
By Rosa Martinez  
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
STOCKTON JUDICIAL BRANCH

JEFF LEE,

Case No. 39-2009-00202004-CU-MC-STK

Plaintiff,

v.

STONEWOOD HOMEOWNERS  
ASSOCIATION, NO. 1, et al.,

FINAL DECISION  
AFTER NON JURY TRIAL

Defendant.

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The court trial in this matter was held on May 18, 2009, in Department 34 of the above-entitled court, the Honorable Charlotte J. Orcutt, presiding. Robert T. Waters, Esq., of the Law Offices of Drivon, Turner & Waters, and Clarence K, Chan, Esq., appeared for trial with Plaintiffs, JEFF LEE and MAIYA MORRISION-LEE (hereafter referred to collectively as "Plaintiffs"). Kevin D. Whittaker, Esq., of the Law Offices of Gordon & Rees, appeared for trial on behalf of Defendant, STONEWOOD HOME OWNERS ASSOCIATION NO.1, a California nonprofit mutual benefit corporation, WILLIAM DRAKE, et al., (hereafter referred to as "Defendant"). Defendant, WILLIAM DRAKE, was dismissed out of the case as a party defendant, prior to the court hearing evidence by mutual agreement of the parties.

Having heard and considered the oral and documentary evidence, arguments of counsel and reviewed the applicable law, and good cause appearing, the decision of the court is as follows:

1 FACTUAL FINDINGS BY THE COURT<sup>1</sup>

2 Mr. William Drake is an employee of the Stonewood Homeowners' Association as its  
3 association manager. Mr. Drake was also a candidate for the 2009 Homeowner's Board of  
4 Directors. The Inspectors of Election<sup>2</sup> asked Mr. Drake to assist them with the election. At the  
5 request of the Inspectors of Election, Mr. Drake did the following: prepared and mailed out the  
6 ballots and envelopes; acted as the contact person for voters with questions about the election;  
7 collected the sealed envelopes containing the ballots from the community drop box and  
8 Defendant's postal mailbox; verified the signature on the envelopes against the association  
9 voter rolls and notified the inspectors of any problems<sup>3</sup>, stored the sealed envelopes containing  
10 the ballots at his home/office<sup>4</sup> until the election; organized a meeting at his home/office upon  
11 request by the inspectors of election to discuss fliers posted around the community; provided  
12 the inspectors of election with information he received from other community members about  
13 their concerns and misunderstanding over the distributed fliers; prepared a letter signed by the  
14 Inspectors of Election invalidating the 2009 Board of Directors' election and read the letter  
15 aloud at the January 14, 2009 Board of Directors' meeting and election.

16 The Inspectors of Election invalidate the 2009 Board of Directors' election due to  
17 distributed campaign materials that they deemed were misleading, deceptive and untrue.<sup>5</sup> The  
18 campaign materials in question were fliers<sup>6</sup> that indicated Mr. David Swanson's name had been  
19 left off the ballot due to a clerical error and he could be written in as a write-in candidate. In  
20 addition, the Inspectors of Elections felt the fliers were misleading because they implied the  
21 current Board of Directors was endorsing for office those individuals listed on the fliers.

22  
23  
24 <sup>1</sup> The majority of the facts in this case were not in dispute.

25 <sup>2</sup> There were three (3) inspectors of election: Sten Bell, Sheri Tomek and Karen Turner. They will hereafter by referred to as  
26 "Inspectors of Election."

27 <sup>3</sup> Mr. Drake testified that one of his duties was to verify signatures, but the inspectors of election made the final decision. Mr.  
28 Drake would notate on the ballot containing envelope if there was a problem and all ballot containing envelopes would be given  
to the inspections of election.

<sup>4</sup> Contained within Mr. Drake's home is the Stonewood Association management office.

<sup>5</sup> See Exhibit 8.

<sup>6</sup> There were three (3) fliers posted and delivered in the Stonewood community. The court just summarized and combined the  
information contained in the 3 fliers. For the exact language contained in the fliers see Exhibit 7.

1 The nomination committee rejected Mr. David Swanson's nomination because he had  
2 active fines which made him ineligible to run as a candidate. In order to run as a candidate for  
3 the board of directors, a nominee must be in good standing with the association according to the  
4 bylaws. The nomination committee deemed that having outstanding fines did not constitute  
5 being in good standing. Mr. David Swanson was notified that his nomination was rejected  
6 because of the outstanding fines by mailed letter dated 12/15/08.<sup>7</sup>

7 A lawsuit ensued due to the invalidation of the 2009 Board of Directors' election by the  
8 Inspectors of Election and Mr. Drake's involvement in the election process by assisting the  
9 Inspectors of Election with their duties when he is an employee of the association and a  
10 candidate for office. The Plaintiffs are alleging multiple violations of Civil Code section  
11 1363.03, which controls elections by homeowners associations.

#### 12 FINDINGS

13 1. The Defendants violated Civil Code section 1363.03(a) (6) and (c)(2) by having Mr.  
14 Drake assist the Inspectors of Election in verifying signatures. Civil Code Section 1363.03  
15 (a)(6) allows the inspectors of election to appoint and oversee additional persons to verify  
16 signatures, provided the persons are independent third parties. Civil Code section 1363.03(c)(2)  
17 goes on to state that an independent third party cannot be a person employed by the association  
18 or a candidate for the board of directors. It is an undisputed fact that Mr. Drake was both an  
19 employee of the association and a candidate for the 2009 Board of Directors. According to the  
20 plain language of statute Mr. Drake is not an independent third party. By having Mr. Drake  
21 compare the signatures on the envelopes<sup>8</sup> containing the ballots, to the association rolls and  
22 thereafter notifying the Inspectors of Election of any discrepancies, Mr. Drake is assisting the  
23 Inspectors of Election in verifying signatures. Verifying signatures is a job exclusively reserved  
24 for the inspectors of election or their designed independent third party. As an employee of the  
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26 \_\_\_\_\_  
27 <sup>7</sup> For rejection letter by the Nomination Committee see Exhibit 6.

28 <sup>8</sup> In the secret balloting process as used here, the only place a person places their signature is on the envelope. There are no signatures on the ballot because this is a confidential voting process.

1 association and as a candidate for office Mr. Drake cannot assist the inspectors of election in  
2 verifying signatures as he did during the 2009 election.

3 2. The Defendants violated Civil Code sections 1363.03(c)(2), (e)(2), and (h) when the  
4 Inspectors of Election had Mr. Drake collect deposited envelopes containing ballots and store  
5 them at his home/office prior to the tallying of ballots. Civil Code section 1363.03(e)(2) states  
6 the inspectors of election may designate the place where completed and signed ballot containing  
7 envelopes may be mailed to or dropped off. Civil Code section 1363.03(h) also states the  
8 sealed ballots at all times shall be in the custody of the inspectors of election or at a place  
9 designated by the inspectors of election until after the tabulation of the votes.

10 The purpose of this statute is to see that homeowner association elections provide clear  
11 election procedures to insure secrecy.<sup>9</sup> As such the statute sets forth the procedure for  
12 conducting a fair election. Civil Code section 1363.03(c)(3)(H) entrusts the fairness of the  
13 election into the hands of the inspectors of election. The inspectors of election are cloaked  
14 under the umbrella of impartiality and fairness as independent third parties as set forth in the  
15 Civil Code section 1363.03(c)(1). Also falling under that umbrella is anyone appointed by them  
16 to assist in their duties. It makes absolutely no sense that the inspectors of election have to be  
17 independent third parties but their assistants do not. Such an interpretation would be  
18 inconsistent with the statute. When interpreting statutes the court must come up with an  
19 interpretation that is consistent with the meaning of the statute. Since it is a responsibility of the  
20 inspectors of election, who are independent third parties to designate where the ballot  
21 containing envelopes are to be stored upon deposit but prior to the tallying of the ballots, the  
22 inspectors of election must designate a place that is an independent third party location. The  
23 statute already tells us that candidates for office and employee of the association are not  
24 considered independent third parties.<sup>10</sup> Common sense dictates that an independent third party  
25 location to store deposited ballot containing envelopes is not the home/office of a candidate in  
26

27 <sup>9</sup> See the legislative history of Civil Code Section 1363.03, California Bill Analysis S.B. 61 Assembly, 6/21/05.

28 <sup>10</sup> The case cited by the defense, *Beatie v. Davila* (1982) 132 Cal.App.3d 424 is distinguishable because it dealt with ballot containing envelopes prior to deposit with the election officials, unlike our case where we are dealing with storage of the ballot

1 that very election. By allowing a candidate for office to hold the envelopes containing the  
2 deposited ballots for tallying cries out with the appearance of impropriety.

3 When the Inspectors of Election chose Mr. Drake as the person to collect the ballot  
4 containing envelopes and store them for the Inspectors of Election, they did what was  
5 convenient<sup>11</sup> versus what was fair and required by law. Just that appearance alone cries out for  
6 a lack of fairness in the election process.<sup>12</sup> During an election the appearance of fairness is just  
7 as important as actual fairness. The court accepts the distinction presented by the defense  
8 between the ballot and the ballot containing envelope, however Civil Code section 1363.03  
9 makes it clear that storing the ballot containing envelopes is a duty of the inspectors of election  
10 and their appointees, and when not done in accordance with this statute there is a violation of  
11 the law.

12 One of the duties of the inspectors of election according to Civil Code section  
13 1363.03(c)(3)(H) is to see that the election is conducted with fairness to all members and this  
14 includes Mr. Drake. The Inspectors of Election had Mr. Drake assist them because he was an  
15 employee of the association and had access to the voter rolls and the association mail and drop  
16 boxes and ran the management office for the association. As an employee of the association  
17 Mr. Drake could not refuse to help the Inspectors of Election. And the mechanism that the  
18 Inspectors of Election chose to conduct the election was through a pre-existing system Mr.  
19 Drake already had in place as manager for the association. Such a process really put Mr. Drake  
20 in an awkward position, because he is now running as a candidate in the very election he is  
21 organizing on behalf of the inspectors of election. The court realizes that inspectors of election  
22 are volunteers, but they still have to perform their duties fairly and impartially to all members.

23 3. The Inspectors of Election acted fairly and within their legal powers under Civil  
24 Code section 1363.03(c)(3)(H) when they invalidated the 2009 Board of Directors' election.  
25 Civil Code section 1363.03 (c)(3)(H) states the inspectors of election must perform any acts as  
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27 containing envelopes after deposit with the election official.

28 <sup>11</sup> The inspectors of election chose Mr. Drake for this task because there was a mechanism already in place for receipt of  
association mail and a drop box by the pool that only he had access to.

1 may be proper to conduct the election with fairness to all members. The Inspectors of Election  
2 had every right within the power vested in them under the Civil Code to meet and ultimately  
3 decide that the fliers distributed throughout the community were false and misleading thus  
4 invalidating the 2009 election for the board of directors. The court finds the Inspectors of  
5 Election did in good faith and within their legal powers vested in them by Civil Code section  
6 1363.03(c)(4) invalidate the 2009 election, due to false and misleading advertising. There was  
7 insufficient evidence presented by the Plaintiff to overcome the prima facie status of Inspectors  
8 of Election letter dated, January 12, 2009<sup>13</sup>, stating their reason for invalidating the election.

9       It was clear to the court that the fliers were indeed false and misleading when they stated  
10 that it was clerical error that David Swanson's name was left off the ballot and that voters could  
11 place him on the ballot as a write-in candidate. Mr. Swanson was notified by letter from the  
12 nomination committee<sup>14</sup> dated, December 14, 2008, that he was not eligible to be a candidate  
13 because he was not in good standing with the association because of the unpaid fines.<sup>15</sup> There  
14 were some arguments at trial that good standing was not defined in the bylaws and therefore  
15 unpaid fines do not make a person unqualified to run for the Board of Directors. The court did  
16 not find this to be a valid argument. It is common knowledge that you are not in good standing  
17 with the association if you have outstanding fines due to a violation of association rules.

18       The Inspectors of Election also felt the fliers were misleading because voters had  
19 complained the fliers indicated the current board of directors was endorsing the candidates on  
20 the fliers. Although the Plaintiffs felt that the fliers were not misleading about this fact and  
21 argued as such, the Plaintiffs could not overcome the facts and findings that the Inspectors of  
22 Election made in their letter, dated January 12, 2009, which the law considers to be prima facie  
23 evidence.

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25  
26 <sup>12</sup> There was no evidence presented that Mr. Drake tampered with the envelopes in anyway.

<sup>13</sup> See Exhibit 8 for letter.

27 <sup>14</sup> There was some argument at trial that the nomination committee was not validly established. This is not an issue properly  
28 leave of court to amend their complaint during trial for this reason.

<sup>15</sup> There were no facts presented at trial that the Plaintiffs knew about the false information contained in the fliers.

1 The court also feels compelled to point out that allowing Mr. Drake to provide input at  
2 the meeting to decide what to do about the false and misleading fliers gave him unprecedented  
3 access to the Inspectors of Election.<sup>16</sup> No other candidate was allowed to give input or have  
4 access to the Inspectors of Election or their meeting on this issue. The inspectors of election  
5 have to act independently of the candidates for election or give equal access to all. However,  
6 this does not change the fact the fliers were indeed false and standing alone could invalidate the  
7 election.

8 5. The court finds the issue of Mr. Drake's timing in turning over the ballot containing  
9 envelopes when served with the injunction, to be moot. The injunction was contingent on the  
10 Plaintiffs posting bond. When the Plaintiffs failed to post bond, the injunction became invalid,  
11 as a matter of law.

12 6. The association bylaws and election rules contain insufficient provisions to address  
13 the issues discussed above, in fact, they are most silent on the issues that brought the parties to  
14 court. The association needs to add provisions to their bylaws and election rules consistent with  
15 Civil Code section 1363.03 and with this court's opinion. With more written guidance given to  
16 the inspectors of election contained in the bylaws or election rules, it is unlikely that this matter  
17 would have ended up in court.

18 7. The court disagrees with the defense in that there is no remedy for an already  
19 invalidated election. The remedy is a new election conducted in a fair manner to all members  
20 and without the taint previously associated with wrongdoing. The court is doing more than just  
21 invalidating an already invalid election. The court is cleaning up the election process so it is  
22 fair to all candidates, consistent with Civil Code section 1363.03, and removing any taint from  
23 the candidates involved in the election so that everyone has a fair chance.

#### 24 FINAL DECISION

25 1. The court finds the Defendant failed to adopt rules consistent with Civil Code section  
26 1363.03 as stated in the above findings.

27 \_\_\_\_\_  
28 <sup>16</sup> The input Mr. Drake gave was by relaying information other voters told him about how they felt the fliers were misleading.

1           2. Defendant violated Civil Code section 1363.03 as stated above.

2           3. The court is ordering a new and fair election consistent with this opinion and Civil  
3 Code section 1363.03.

4           4. The court is ordering the appointment new inspectors of election consistent with  
5 Civil Code section 1363.03. New inspectors shall be appointed within twenty (20) days of the  
6 issuance of the court's judgment by a simple majority vote of the current members of the Board  
7 of Directors. The court is allowing a majority vote in this instance because time is of the  
8 essence and the Board cannot conduct business without a quorum and business has not been  
9 conducted during the pendency of this lawsuit. New inspectors of election are required because  
10 it was their conduct and decisions which the court found violated Civil Code section 1363.03.

11           5. No fine will be assessed to the Defendant in this matter as nothing was done  
12 maliciously or with ill will, but simply a lack of guidance and understanding of the law. The  
13 court realizes the law does not require ill intent to fine the Defendant, but no purpose is being  
14 served by such additional action by the court.

15           6. The court is ordering the Association to add provisions to their bylaws and election  
16 rules consistent with Civil Code section 1363.03 and this court's decision.

17           7. The court declares the Plaintiffs as the prevailing party under Code of Civil  
18 Procedure section 1032. Plaintiffs are the prevailing party in this matter because they proved  
19 up the allegations in their complaint that the Association violated Civil Code section 1363.03.  
20 Civil Code section 1363.09(b) allows the court to award attorney fees and costs to those who  
21 prevail in a civil action to enforce their rights. Plaintiffs will be awarded attorney fees and costs  
22 of suit. However, the plaintiffs are not entitled to any attorney fees or costs for the injunctive  
23 relief that they sought and failed to post bond. Plaintiffs are to submit a Memorandum of costs.

24           Plaintiffs shall prepare the judgment within ten (10) days of court's final decision  
25 pursuant to Rule CRC 3.1312.

26 Dated: July 24, 2009

27   
28 HON. CHARLOTTE J. ORCUTT  
Judge of the Superior Court

Filed JUL 24 2009,  
ROSA JUNQUEIRO, CLERK

By Rosa Martiney  
DEPUTY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

JEFF LEE,

Plaintiff,

v.

STONEWOOD HOMEOWNERS ASSOCIATION,  
NO. 1, et al.,

Defendant.

Case No: 39-2009-00202004-CU-MC-STK

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, declare that I am a Deputy Superior Court Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on **JULY 24, 2009**, I placed the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I placed true and correct copies of **FINAL DECISION AFTER NON JURY TRIAL**, a printed copy of which is hereto attached and made a part hereof, one copy of which being addressed to each of the following named persons at the following address:

- ROBERT T WATERS ESQ  
DRIVON TURNER & WATERS  
215 N SAN JOAQUIN ST  
STOCKTON CA 95202

KEVIN D WHITTAKER ESQ  
GORDON & REES LLP  
275 BATTERY ST SUITE 2000  
SAN FRANCISCO CA 94111

- CLARENCE K CHAN ESQ  
3247 W MARCH LN SUITE 120  
STOCKTON CA 95219

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Stockton, California, on the date above specified.

Rosa Martiney  
Deputy Superior Court Clerk

**CERTIFICATE OF SERVICE BY MAIL**