



**CLARENCE K. CHAN**

ATTORNEY AT LAW

3247 W. March Lane, Suite 120  
Stockton, California 95219

phone 209-473-8818  
fax 209-444-9900  
cchan@chan-law.com

April 28, 2009

By Hand Delivery Only

Kevin Whittaker, Esq.  
Gordon & Rees LLP  
275 Battery Street  
San Francisco, CA 94111

RE: *Lee v. Stonewood Homeowners Association No. 1*  
San Joaquin County Superior Court, Case No. 39-2009-00202004-CU-MC-STK

Dear Mr. Whittaker:

We received your April 27, 2009 faxed rejection of the April 23, 2009 settlement proposal. If Stonewood is not willing to admit that Mr. Drake's actions violated Civil Code Section 1363.03 then there will be no way to resolve this matter. It is hard to believe that you actually think that section 1363.03 does not prohibit Mr. Drake from receiving the ballots as condition number 7 of your counter offer eliminates Mr. Drake from performing the exact functions that he performed for the January 2009 election. Those tasks must be delegated to a neutral third party in the future.

Your counter offer indicates that plaintiffs will somehow be precluded from recovering costs and fees in this matter. Your April 27, 2009 counter offer is the first time that defendants have ever indicated that the statutory violation— most notably Mr. Drake's assistance in the election— would be addressed; to wit, in condition number 7 of your counter offer. Plaintiffs' actions in the filing and preparation of this matter for trial are neither frivolous, unreasonable, or without foundation. The defendants will be on the hook for all fees and costs.

If Stonewood is willing to admit that Mr. Drake's actions violated Civil Code Section 1363.03 I am optimistic that we can reach resolution as the general framework of your counter offer is consistent with our settlement proposal. Of course, the homeowners will need to be informed that Mr. Drake's actions were in violation of 1363.03, Stonewood will have to pay civil penalties for violating 1363.03, and Stonewood will have to pay my clients' costs and attorney fees. We have no objection to having a fee hearing to determine the amount of reasonable attorneys' fees and costs plaintiffs have incurred. Please advise me at your earliest convenience whether you feel we should continue to work towards resolution.

Sincerely,

Clarence K. Chan

# DRIVON TURNER & WATERS

Laurence E. Drivon, Of  
Counsel

Davey L. Turner  
dtuner@drivonlaw.com

Robert T. Waters  
rwaters@drivonlaw.com

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Hon. Laurence Drivon  
(1913-2005)

PROFESSIONAL LAW CORPORATION

215 NORTH SAN JOAQUIN ST.  
STOCKTON, CA 95202

Telephone  
(209) 644-1234

Facsimile  
(209) 463-7668

Web:  
www.drivonlaw.com

April 30, 2009

**Via Facsimile (415)986-8054 & email kwhittaker@gordonrees.com Only**

Kevin D. Whittaker  
Gordon & Rees  
275 Battery Street, Suite 2000  
San Francisco, California 94111

**Re: Lee v. Stonewood Homeowners Association, No. 1**

Dear Kevin:

I am in receipt of your faxed letter dated April 29, 2009. I am disappointed that your clients have misinterpreted plaintiffs' good faith effort to resolve this matter as an opportunity to attack the Lees, who simply seek a fair election. As I have explained, to reach a resolution short of trial defendants must be willing to admit that Mr. Drake's actions violated Civil Code Section 1363.03. The draft language contained in your April 29, 2009 letter does not do that. Yesterday, April 29, 2009 I emailed you the following proposed language to be included in a notice to all Stonewood residents:

As announced at the 2009 Annual Membership Meeting, the 2009 Board of Directors Election was invalidated. The invalidation of the election resulted in a civil lawsuit brought by Jeff Lee and Maiya Morrison Lee against the Stonewood Homeowners Association No. 1 and its manager Bill Drake. One of the allegations in the complaint is that a violation of California Civil Code Section 1363.03 and Stonewood's by-laws occurred. Both Civil Code Section 1363.03 and Stonewood bylaws prohibit either an Association employee or a candidate for the election from receiving ballots. Stonewood does not dispute that Mr. Drake, who is a paid employee of the Association and who was a candidate for the 2009 election, received and maintained the ballot envelopes. The parties to the lawsuit have reached a resolution to the lawsuit and have agreed to hold a new election. The parties mutually agree that for the new election, Mr. Drake will not

April 30, 2009

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Kevin D. Whittaker  
Gordon & Rees

**Re: Lee v. Stonewood Homeowners Association, No. 1**

receive, handle, or maintain the ballots. The parties agree that the election will be run pursuant to Stonewood bylaws and Civil Code 1363.03. The Stonewood Homeowners Association No. 1 will not and does not endorse any candidate for the Board of Directors. All candidates may campaign as allowed under the by-laws and California law.

I remain confident that if Stonewood agrees to this language in the notice the remaining terms of the resolution can be quickly worked out as both sides appear to have the same framework regarding the rescheduled election.

I am having difficulty understanding why defendants are not in agreement with the proposed neutral language. I fear that the reason that defendants can not agree to the neutral language is because a conflict exists between the HOA, who stands to gain from our proposal, and Bill Drake, who violated the election law and rules. It appears that this conflict will require the HOA to expend monies for the trial of this matter. As you know trials are time consuming and expensive. As you also know Civil Code 1663.09 provides for recovery of plaintiffs attorney fees and costs once the statutory violation is established. Failing to agree to the neutral language regarding the violation is not acting in the HOA's best interest.

Please advise by 3:00 today as to whether this language is acceptable. If we do not hear from you we will presume that resolution of this matter short of trial is not possible.

Very truly yours,



ROBERT T. WATERS

cc: Clarence Chan (via facsimile only 444-9900)

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Counsel

Davey L. Turner  
dturner@drivonlaw.com

Robert T. Waters  
rwaters@drivonlaw.com

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April 30, 2009

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San Francisco, California 94111

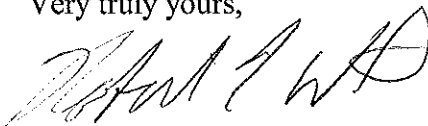
**Re: Lee v. Stonewood Homeowners Association, No. 1**

Dear Kevin:

I never understand why defense attorneys want to take the take it or leave it approach, it never works. Although it does make the decision a lot easier. We will leave it.

With the state of the facts discovered I can not understand how either you or your clients can believe that Mr. Drake's, a paid employee of the Association and a candidate for the 2009 Board of Directors, actions in receiving the ballots did not violate Section 1363.03. It is clear that defendants require a court to tell them that a violation of 1363.03 occurred. Therefore we will proceed to trial. I must reiterate that I feel this is the wrong choice, the choice is against the interest of the Association, and that in making this choice the Board and Mr. Drake are being reckless with the Association's funds. It also makes it a lot easier to recover all attorney fees and costs once we prove Mr. Drake's actions violated the statute as the Board refuses to admit to the violation. Thank you.

Very truly yours,



ROBERT T. WATERS

cc: Clarence Chan (via facsimile only 444-9900)

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April 30, 2009

*Via Email kwhittaker@gordonrees.com Only*

Kevin D. Whittaker  
Gordon & Rees  
275 Battery Street, Suite 2000  
San Francisco, California 94111

**Re: Lee v. Stonewood Homeowners Association, No. 1**

Dear Kevin:

This will confirm our conversation of earlier today where we agreed that we will submit a combined set of exhibits for the trial. I have attached to this email one PDF file that includes the exhibits we discussed and agreed to. It is my understanding that you will review the attached exhibits and then forward any additional exhibits you wish to include. So long as you provide any additional exhibits by Monday morning we should be in good shape. After I receive any additional exhibits I will have the exhibit stickers placed and prepare a copy for the court and yourself. This will also confirm that we have agreed to stipulate to the foundation and authenticity issues with the combined exhibits.

During our telephone conversation we also discussed our mutual disbelief that this case could not resolve. The only issue impeding resolution is whether the Board and Mr. Drake will admit that 1363.03 was violated because Mr. Drake, a paid employee of the Association and a candidate for the 2009 Board of Directors, assisted the election inspectors by receiving and verifying the 2009 ballots. I refer your attention to the following deposition exhibits and paragraphs: Deposition Exhibit 18, Paragraph 6; Deposition Exhibit 19, paragraph 6; Deposition Exhibit 7, Paragraph 6; Deposition Exhibit 22, Paragraph 8; and Deposition Exhibit 23, Paragraph 7. It makes no sense as to why the Association would not admit what Mr. Drake and the election inspectors have already put in a sworn declarations and testified to under oath at deposition. The failure of the Association to admit to the clearly established statutory and bylaw violation is the sole reason why both sides are incurring costs associated with the trial of this matter. As I have said numerous times in phone conversations and written correspondences the remaining issues, including plaintiffs attorneys fees and costs, can be effectively dealt with if the Association will admit to its members Mr. Drake's statutory and bylaw violation.

May 1, 2009

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Kevin D. Whittaker

Gordon & Rees

**Re: Lee v. Stonewood Homeowners Association, No. 1**

Please provide additional exhibits at your convenience. I will see you on Monday at 1:30 pm.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Waters", with a long horizontal flourish extending to the right.

ROBERT T. WATERS

cc: Clarence Chan (via mail only)

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www.drivonlaw.com

May 7, 2009

Via Facsimile (415)986-8054 & email kwhittaker@gordonrees.com Only

Kevin D. Whittaker  
Gordon & Rees  
275 Battery Street, Suite 2000  
San Francisco, California 94111

**Re: Lee v. Stonewood Homeowners Association, No. 1**

Dear Kevin:

I am sure you got the word that the trial of this matter has been continued until May 18, 2009. As you know, the only issue impeding resolution of this matter is the Board's and Mr. Drake's failure to admit that 1363.03 was violated because Mr. Drake, a paid employee of the Association and a candidate for the 2009 Board of Directors, assisted the election inspectors by receiving, maintaining, and verifying the 2009 ballots. It makes no sense as to why the Association and Drake will not admit what Mr. Drake and the election inspectors have already put in a sworn declarations and testified to under oath at deposition, i.e. Drake's receipt, maintenance, and verification of the ballot envelopes. The failure of the Association to admit to the clearly established statutory and bylaw violation is the sole reason why both sides are continuing to incurring costs and attorney fees associated with this matter. As I have said numerous times in phone conversations and written correspondences the remaining issues, including: fair election protocol; statutory penalty; plaintiffs attorneys fees and costs-- can be effectively dealt with if the Association will admit to its members Mr. Drake's statutory and bylaw violations. It makes no sense for either side to incur further fees and costs in this matter. I hope the Board will stop being reckless with Association funds. If you would like to discuss resolution of this matter, please call.

Very truly yours,



ROBERT T. WATERS

cc: Clarence Chan (via facsimile only 444-9900)