

1 SIRJIT SANDHU
2 2216 PARNASSUS COURT
3 HAYWARD, CA 94542

4 *In Pro Per*

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF ALAMEDA
8

9 MCH ELECTRIC, INC.,

10 Plaintiff,

11 vs.

12 ALTIMA CONTRACTING LTD, INC.;;
13 FAIRVIEW HILLS LLC; FINANCIAL
14 PACIFIC INSURANCE COMPANY, and
DOES 1 through 100, inclusive,

15 Defendants.

Case No. HG 09455003

**COMPLAINT IN INTERVENTION
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 387**

**(INTERVENTION IN FINANCIAL
PACIFIC INSURANCE COMPANY V.
COUNTY OF ALAMEDA ET AL.)**

Filed: April __, 2012
Dept: 520
Judge: Hon. David Hunter

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18 FINANCIAL PACIFIC INSURANCE
COMPANY,

19 Cross-Intervener,

20 vs.

21 COUNTY OF ALAMEDA, et al.

22 Cross-Defendants,
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1 FAIRVIEW HILLS, LLC, et al.

2 Cross-Interveners,

3 vs.

4 FINANCIAL PACIFIC INSURANCE
5 COMPANY, et al.

6 Cross-Defendants,
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8 Intervener Sirjit Sandhu (“Intervener”), having been granted his *ex parte*
9 motion to intervene on April 4, 2012, brings his Complaint in Intervention pursuant to Code
10 of Civil Procedure section 387(a) and alleges as follows:

11 1. Defendant Fairview Heights Homeowners Association, hereinafter
12 referred to as “Association,” is, and at all times herein mentioned was, a non-profit
13 corporation duly organized under the laws of the State of California and has its principal
14 place of business in Alameda County, California. The Association is governed by the
15 Declaration of Covenants Conditions and Restrictions, Fairview Heights recorded in the
16 Official Records of the County of Alameda September 5, 2006 as document number
17 2006337411 (the “CC&Rs”) and the Bylaws of Fairview Heights Homeowners Association
18 (the “Bylaws”).

19 2. The Association is the owner of several streets, a sophisticated
20 stormwater system (including a mechanical pump and retention basins), sewer systems,
21 potable water system and other common infrastructure and common property in the
22 residential subdivision known as Tract 6102 in the Fairview area of the unincorporated area
23 of Alameda County. Eight homes within the subdivision were constructed prior to 2008. The
24 vast majority of the 40 lots, however, have lain dormant during the recent period of economic
25 malaise. The Association, although formed as a legal corporation, never became active until
26 August 2011.

27 3. Intervener is ignorant of the true names and capacities of defendants
28 sued herein as DOES 1-through 50, inclusive, and therefore identify these defendants by such

1 fictitious names. Intervener will amend this complaint to allege their true names and
2 capacities when ascertained.

3 4. At all times herein mentioned each of the defendants was the agent and
4 employee of each of the remaining defendants, and in doing the things hereinafter alleged,
5 was acting within the scope of such agency.

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9 **FIRST CAUSE OF ACTION**

10 **Reduction in number of votes required for quorum (Corporations Code section 7515)**

11 5. As a Member of the Association, the Intervener has a significant interest
12 in the underlying litigation and is entitled to intervene and file a complaint in intervention
13 pursuant to Code of Civil Procedure section 387.

14 6. Intervener, being the record owner of the real property located at 24518
15 Karina Street, Hayward, California, is an owner of real property within Tract 6102, and, as
16 such, is "automatically . . . a Member of the Association," pursuant to paragraph 3.2 of the
17 CC&Rs.

18 7. As a Member of the Association who has a significant interest in a
19 responsive and operational homeowners' association, Intervener seeks a Court Order
20 reducing the number of votes for quorum pursuant to corporations code section 7515, such
21 that directors may be elected and the Association may begin operation to carry out its duties
22 related to the Tract 6012 homeowners and greater Alameda County community.

23 8. The Association, having neither directors, officers nor other authorized
24 agents, has failed to undertake any and all of its duties as a common interest development for
25 the period of time starting with the formation of the Association, in September 2006, through
26 the date of this Petition.

27 9. In particular, the Association failed to comply with the following,
28 nonexclusive list of duties:

a. The Association failed to take any steps to maintain the

1 common areas of Tract 6102 as required by paragraph 8.1 (A) of the CC&Rs, and specifically
2 has failed to enter into agreements with street cleaning or landscape maintenance companies
3 and failed to enter into any agreement to maintain a storm water pump station at the site;

4 b. The Association failed to obtain and maintain insurance policies
5 of any kind for the common areas of Tract 6102 as required by paragraph 8.1(C) of the
6 CC&Rs;

7 c. The Association failed to fix, levy or collect Assessments, as this
8 term is defined in the CC&Rs, in violation of paragraph 8.1(E) of the CC&Rs;

9 d. The Association failed to pay fees to maintain its corporate
10 status in violation of paragraph 8.1 (F) of the CC&Rs;

11 e. The Association failed to establish and maintain a neighborhood
12 crime watch in violation of paragraph 8.1(H) of the CC&Rs;

13 f. The Association failed to negotiate with its neighbors related to
14 permanent easements as required by agreement entered into by the predecessor in interest to
15 the Association;

16 g. The Association has failed to hold Annual Meetings as discussed
17 in paragraph 3.1 of the Bylaws; and

18 h. The Association failed to file a responsive pleading in this
19 action, resulting in the default being entered against the Association in this action.

20 10. The Intervener is informed and believes, and thereon alleges, that the
21 Association held no meetings between the time the Association was formed in 2006 until
22 August 2011. Beginning in August 2011, Intervener and other interested members held the
23 first meetings of the Members of the Association.

24 11. To become an active, functioning homeowners association, the
25 Association's members attempted to elect directors to make routine decisions and act as
26 authorized agents of the Association. The Association held a meeting in late September,
27 2011, attended by at least 22 members. The members present agreed to a hold an election by
28 secret ballot to choose directors for the Association. At the meeting, five volunteers were

1 nominated as candidates for the three director positions. After the meeting, Intervener sent
2 ballot forms to each of the known members, and requested that ballots be returned no later
3 than October 20, 2011. Of the 40 ballots sent out, however, only nine (9) were returned. As
4 Petitioner was advised that 22 votes are necessary for a quorum to elect directors, the election
5 was determined to be ineffective.

6 12. Having failed to reach a quorum in the first election, the Association
7 made a second attempt to reach a quorum to elect directors through a secret ballot. In a
8 follow up to the previous meeting, in early November, the Association's members voted to
9 hold another election via secret ballot, and selected Roy Helsing of the Helsing Group
10 ("Helsing") to act as Inspector of Elections. At this meeting, eight candidates were
11 nominated for the three Director positions by a process that provided for the selection of any
12 person who expressed a desire to be a candidate.

13 13. On January 18, 2012, Helsing, acting as Inspector of Elections,
14 delivered secret ballots to each of the 40 record owners of property within Tract 6102. A list
15 of the record property owners was created from the property records in the Alameda Official
16 Records. Each of the secret ballots delivered by Helsing included two envelopes (one to fit
17 within the other to ensure confidentiality), and the following written materials:

- 18 (a) Official Ballot;
- 19 (b) Voting Instructions;
- 20 (c) Frequently Asked Questions; and
- 21 (d) A cover letter.

22 14. The Official Ballot required that the Ballot be returned in the envelopes
23 provided by February 27, 2012.

24 15. Intervener and other Association members made numerous phone calls
25 and sent numerous emails to members of the Association to encourage that each member vote
26 by returning their secret ballots. Many of the members expressed disinterest in voting, stating
27 they preferred to avoid paying Association dues, and believed that the selection of directors
28 would lead to the assessment of dues.

1 16. Despite extraordinary efforts by Intervener and other involved Members
2 of the Association, only 12 out of 40 ballots were returned to the Inspector of Elections by the
3 due date of February 27, 2012. Two additional ballots were delivered February 28 and 29,
4 respectively; although one of the ballots was not signed.

5 17. Having held elections using secret ballots on *two* occasions, and having
6 failed to reach a quorum of 22 votes on both occasions, Intervener and other active
7 Association Members believe the Association cannot reach a quorum using the normal
8 procedures.

9 18. The 14 ballots from the second election (including the two delivered
10 late) remain unopened as of the date of the filing of this petition in the possession of Helsing.

11 19. The Bylaws and California law are ambiguous as to whether a quorum
12 is required for the initial election of Directors. However, these authorities could be
13 interpreted to require a quorum of 22 of the 40 Members. Paragraph 5.2 of the Bylaws states
14 that:

15 The first election of the Board shall be conducted at the first
16 meeting of the Association. At such election the Members or
17 their proxies may cast, in respect to each vacancy, as many votes
18 as they are entitled to exercise under the provisions of the
19 Declaration. ***The persons receiving the largest number of votes
shall be elected.*** All members shall be entitled to cumulate their
votes for one (1) or more candidates for the Board, . . .

19 Paragraph 3.4 of the Bylaws states:

20 3.4 **Quorum.** The presence either in person or by proxy, at
21 any meeting, of Members entitled to cast ***a majority plus one (1)***
22 ***of the total voting power of the Association . . .*** shall constitute a
quorum for any action except as otherwise provided in the
Declaration, or these Bylaws.

23 Code of Civil Procedure § 1363.03 (b) states:

24 Notwithstanding any other law or provision of the governing
25 documents, elections regarding assessments legally requiring a
26 vote, election and removal of members of the association board
27 of directors, amendments to the governing documents, or the
28 grant of exclusive use of the common area property pursuant to
Section 1363.07 shall be held by secret ballot in accordance with
the procedures set forth in this section. ***A quorum shall be
required only if so stated in the governing documents of the
association or other provisions of law.*** If a quorum is required
by the governing documents, each ballot received by the inspector of

1 elections shall be treated as a member present at a meeting for
2 purposes of establishing a quorum. An association shall allow
3 for cumulative voting using the secret ballot procedures provided
4 in this section, if cumulative voting is provided for in the
5 governing documents.

(Emphasis added).

6 20. Where it is "impractical or unduly difficult for any corporation to call or
7 conduct a meeting of its members," the Superior Court, pursuant to Corporations Code
8 §7515, may, upon request of a member, specify that a meeting of a corporation may be held
9 "in such a manner as the court finds fair and equitable under the circumstances."

10 21. If Intervener is successful in this action, a substantial benefit will result
11 to defendant Association on whose behalf this action is prosecuted.

12 **PRAYER FOR RELIEF**

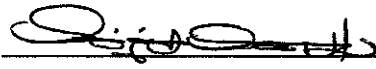
WHEREFORE, Intervener prays for relief as follows:

- 13 1. Dispensing with any requirement for a quorum for the following
14 elections: (1) the election initiated on January 18, 2012 to choose initial directors of the
15 Association, and, (2) provided secret ballots are delivered to all record members pursuant to
16 Civil Code Section 1363.03, all future elections initiated by Members or Directors of the
17 Association for a period of five years from the date of the Court's Order;
- 18 2. Directing Helsing, acting as Inspector of Elections, to open, count and
19 tabulate the Secret Ballots in Helsing's possession which were cast by Members of the
20 Association as of February 27, 2012 at an open meeting of the Association to which all
21 members are given 10 days written notice;
- 22 3. Directing Helsing to determine the three persons who obtained the most
23 votes from these secret ballots, pursuant the Bylaws, CC&Rs, and California law without
24 consideration of whether a quorum was reached;
- 25 4. Appointing as a Director of the Association for a term of one year each
26 of the three top vote getters in the 14 secret ballots as determined by Helsing applying the
27 Bylaws, CC&Rs and California law as stated herein;
- 28 5. For reimbursement of Intervener's costs herein; and

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6. For such other and further relief as the Court may deem proper.

Dated: April 16, 2012

By: 

Sirjit Sandhu

1 VERIFICATION

2 I, Sirjit Sandhu, am the Intervener in the above-entitled action. I have read the
3 foregoing complaint and know the contents thereof. The same is true to my own knowledge,
4 except as to those matters which are therein alleged on information and belief, and to those
5 matters, I believe to be true.

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7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

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10 Dated: 4/16/12



11 Sirjit Sandhu
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