

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

**PETITIONER SIRJIT SANDHU'S
PETITION TO REDUCE QUORUM
REQUIREMENTS FOR NON-PROFIT
CORPORATION**

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

Date: May 25, 2012
Time: 9:30 a.m.
Dept: 520
Judge: Hon. David Hunter

Reservation No. R-1279115

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20 FINANCIAL PACIFIC INSURANCE
COMPANY,

21 Cross-Intervener,

22 vs.

23 COUNTY OF ALAMEDA, et al.

24 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,

7 **I. INTRODUCTION**

8
9 Intervener Sirjit Sandhu (“Petitioner”) respectfully petitions the Court to reduce
10 the quorum requirements, pursuant to California Corporations Code §7515, of the non-profit
11 corporation Fairview Heights Homeowners Association (“the Association”).

12 The California State legislature enacted Corporations Code (“Corp. Cd.”)
13 §7515 to allow corporations to operate in a situation identical to that faced by Petitioner and
14 other property owners in the common interest development known as Tract 6102. Namely; in
15 enacting the statute, the legislature provided for a mechanism whereby the Superior Court
16 may modify the quorum requirements of a nonprofit corporation’s bylaws in circumstances
17 where apathy, long periods of inactivity, and/or other sedentary forces prevent a corporation
18 from meeting the stated quorum requirements.

19
20 Here, a majority of members of the Association—many of which members are
21 underwater financially on their still vacant properties-- steadfastly fail to submit ballots for
22 the most elemental decision of the Association, the election of directors. Due to this failure,
23 the HOA has not, and cannot, elect directors or other authorized representatives and,
24 therefore, cannot maintain the common areas, procure insurance or take other steps to protect
25 itself and its members.

26 As the Petitioner and other members of the Association bought their property
27 in reliance upon the subdivision being governed by a functioning association that adequately
28

1 maintains and protects the common areas of the association, Petitioner petitions the Court to
2 lower the quorum requirements for the selection of directors.

3 **II. STATEMENT OF RELEVANT FACTS**

4 Defendant Fairview Heights Homeowners Association, hereinafter referred to
5 as "Association," is, and at all times herein mentioned was, a non-profit corporation
6 organized under the laws of the State of California for the sole purpose of acting as the
7 homeowners association for the Tract 6102 common interest development in Alameda
8 County, California. The legal status of the corporation was suspended because the
9 corporation has not filed the necessary annual statements. Declaration of Sirjit Sandhu
10 ("Sandhu Declaration"), ¶ 2, Exh. "A."

11 The Association is governed by the Declaration of Covenants Conditions and
12 Restrictions, Fairview Heights recorded in the Official Records of the County of Alameda
13 September 5, 2006 as document number 2006337411 (the "CC&Rs") and the Bylaws of
14 Fairview Heights Homeowners Association (the "Bylaws"). Sandhu Decl., ¶3, Exhs. "B" and
15 "C."

16 The Association is the owner of several streets, a sophisticated stormwater
17 system (including a mechanical pump and retention basins), sewer systems, a potable water
18 system and other common infrastructure and common property in the residential subdivision
19 known as Tract 6102 in the Fairview area of the unincorporated area of Alameda County.

20 Eight homes within the subdivision were constructed prior to 2008. The vast
21 majority of the 40 lots, however, have lain dormant during the recent period of economic
22 malaise. The Association, although formed as a legal corporation, never became active in
23 any practical way until August 2011, when Petitioner and a group of other members began
24 holding the meetings and made the unsuccessful attempts at holding elections described
25 herein below. Sandhu Decl., ¶ 4,5

26 The Association, having neither directors, officers nor other authorized agents,
27 has failed, and continues to fail, to undertake any and all of its duties as a common interest
28 development for the period of time starting with the formation of the Association, in

1 September 2006, through the date of this Petition. Sandhu Decl., ¶6

2 In particular, the Association failed to comply with the following, nonexclusive
3 list of duties:

4 a. The Association failed to take any steps to maintain the common
5 areas of Tract 6102 as required by paragraph 8.1 (A) of the CC&Rs, and specifically has
6 failed to enter into agreements with street cleaning or landscape maintenance companies and
7 failed to enter into any agreement to maintain a storm water pump station at the site;

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

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

13 d. The Association failed to file the proper reports to maintain its
14 corporate status in violation of paragraph 8.1 (F) of the CC&Rs;

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

17 f. The Association failed to negotiate with its neighbors related to
18 permanent easements as required by agreement entered into by the original developer, a
19 predecessor in interest to the Association;

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

22 h. The Association failed to file a responsive pleading in this
23 action, resulting in the default being entered against the Association in this action. Sandhu
24 Decl., ¶ 7.

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

1 choose directors for the Association. At the meeting, five volunteers were nominated as
2 candidates for the three director positions. After the meeting, Petitioner sent ballot forms to
3 each of the known members, and requested that ballots be returned no later than October 20,
4 2011. Of the 40 ballots sent out, however, only nine (9) were returned. As Petitioner was
5 advised that 22 votes are necessary for a quorum to elect directors, the election was
6 determined to be ineffective. Sandhu Decl., ¶ 8.

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

14 On January 18, 2012, Helsing, acting as Inspector of Elections, delivered secret
15 ballots by mail to each of the 40 record owners of property within Tract 6102. A list of the
16 record property owners was created from the property records in the Alameda Official
17 Records. Sandhu Decl., ¶10, Exh. "D."

18 Each of the secret ballots delivered by Helsing included two envelopes (one to
19 fit within the other to ensure confidentiality), and the following written materials:

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

24 Sandhu Decl., ¶11, Exh. "E."

25 The Official Ballot required that the Ballot be returned in the envelopes
26 provided by February 27, 2012. Sandhu Decl., ¶¶ 12

27 Petitioner and other Association members made numerous phone calls and sent
28 numerous emails to members of the Association to encourage that each member vote by

1 returning his or her secret ballots. Many of the members expressed disinterest in voting,
2 however, stating they preferred to avoid paying Association dues and stating that they
3 believed that the selection of directors would lead to the assessment of dues. Sandhu Decl., ¶
4 13.

5 Despite these extraordinary efforts by Petitioner and other involved members
6 of the Association, only 12 out of 40 ballots were returned to the Inspector of Elections by the
7 due date of February 27, 2012. Two additional ballots were delivered February 28 and 29,
8 2012, respectively; although one of the ballots was not signed. The 14 ballots from the
9 second election (including the two delivered late) remain unopened as of the date of the filing
10 of this petition in the possession of Helsing. Sandhu Decl., ¶ 14.

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

14 The first election of the Board shall be conducted at the first
15 meeting of the Association. At such election the Members or
16 their proxies may cast, in respect to each vacancy, as many votes
17 as they are entitled to exercise under the provisions of the
18 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, . . .

18 Paragraph 3.4 of the Bylaws states:

19 3.4 **Quorum.** The presence either in person or by proxy, at
20 any meeting, of Members entitled to cast *a majority plus one (1)*
21 *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.

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

23 Notwithstanding any other law or provision of the governing
24 documents, elections regarding assessments legally requiring a
25 vote, election and removal of members of the association board
26 of directors, amendments to the governing documents, or the
27 grant of exclusive use of the common area property pursuant to
28 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 elections shall be treated as a member present at a meeting

1 for purposes of establishing a quorum. An association shall
2 allow for cumulative voting using the secret ballot procedures
3 provided in this section, if cumulative voting is provided for in
4 the governing documents.

5 Sandhu Decl., ¶ 15, 16 (Emphasis added).

6 Having held elections using secret ballots on *two* occasions, and having failed
7 to reach a quorum of 22 votes on both occasions, Petitioner and other active Association
8 members believe the Association cannot reach a quorum using the normal procedures set
9 forth in the Association Bylaws. Sandhu Decl., ¶ 17.

10 For this reason, Petitioner requests involvement of the Court to lower the
11 quorum requirements set forth in the Association Bylaws.

12 **III. THE COURT SHOULD REDUCE THE QUORUM REQUIREMENTS
13 BECAUSE IT IS IMPRACTICAL TO OBTAIN A QUORUM UNDER THE
14 CURRENT BYLAWS**

15 **A. The Court Has Authority To Change The Requirements For A Quorum**

16 Corporations Code § 7515(a) provides:

17 If for any reason it is impractical or unduly difficult for any
18 corporation to call or conduct a meeting of its members,
19 delegates or directors, or otherwise obtain their consent, in the
20 manner prescribed by its articles or bylaws, or this part, then the
21 superior court of the proper county, upon petition of a director,
22 officer, delegate or member, may order that such a meeting be
23 called or that a written ballot or other form of obtaining the vote
24 of members, delegates or directors be authorized, in such a
25 manner as the court finds fair and equitable under the
26 circumstances.

27 Because meeting the quorum requirements of the current members has become
28 unduly difficult and impractical, Petitioner requests the Court to change these requirements to
ones that are fair and equitable under the circumstances.

29 **B. Lowering the Quorum Requirements Stated In The Association Bylaws Is
30 A Proper Remedy Under Corp. Cd. §7515(c)**

31 The authority to lower the requirements of any quorum is expressly stated in
32 Corp. Cd. § 7515(c), which provides:

33 The order issued pursuant to this section may dispense with any
34 requirement relating to the holding of and voting at meetings or
35 obtaining of votes, *including any requirement as to quorums or
36 as to the number or percentage of votes needed for approval*, that would

1 otherwise be imposed by the articles, bylaws, or this part.
2 (Emphasis added).

3 Corp. Cd. §7515 was applied in *Greenback Townhomes Homeowners*
4 *Association v. Rizan* (1985) 166 Cal.App.3d 843 (“*Greenback HOA*”), a matter involving an
5 election conducted by a homeowners association to revise its recorded covenants, conditions
6 and restrictions and its bylaws to reflect recent changes in the Davis-Stirling Common
7 Interest Development Act. The membership of the homeowners association in *Greenback*
8 *HOA* totaled 155 members. Ninety-four of these members cast votes in favor of the
9 revisions. Twenty-seven members cast votes in opposition. The Board of Directors for the
10 association filed the petition because the election failed to meet the stated quorum
11 requirements in the association’s bylaws requiring revisions to the covenants, conditions and
12 restrictions to be approved by 75% of *all of the 155 members*. The appellate court in
13 *Greenback HOA* upheld a trial court decision to change the quorum requirement from one
14 that required 75% of the *total membership* to one that allowed an election to be effective
15 where the ballot was approved by 75% of the number of *members who actually voted*. This
16 Order allowed the previously election to be effective on the grounds that the 94 votes
17 constituted 75% of membership who had actually voted.

18 Petitioner requests a similar Order for the Association, that would allow
19 elections for directors and other decisions to be decided based upon a quorum of the votes
20 cast in the January 18, 2012 election, as opposed to a quorum requirement based upon the
21 total membership.¹

22 **C. Petitioner Has Standing Under Corp. Code §7515**

23 Intervener is the record owner of the real property located at 24518 Karina
24 Street, Hayward, California, real property within Tract 6102. Sandhu Decl., ¶ 1. As an
25 owner of property within the subdivision he is “automatically . . . a Member of the

26 ¹ The *Greenback HOA* case is distinct from the current matter in one respect. Unlike
27 the current situation, the *Greenback HOA* matter involved changes to the association’s
28 CC&Rs. In the present matter, Petitioner only requests a change to the quorum requirements
of the Bylaws, and makes no request to change the CC&Rs.

1 Association,” pursuant to paragraph 3.2 of the CC&Rs. Sandhu Decl., Exh. “B.” Corp. Cd. §
2 7515(a) provides for the remedy requested in this Petition “upon petition of a director, officer,
3 delegate or *member*.” (Emphasis added). As a member of the Association, Petitioner has
4 standing to bring this claim.

5 **A. The Members of The Association Were Given Proper Notice Of The**
6 **Election**

7 The secret ballot held by the Helsing Group provided each member with notice
8 of the election. Sandhu Decl. ¶ 10, 11, Exhs. “D” and “E.” Corp. Cd. § 7515(b) provides:

9 (b) The court shall, in an order issued pursuant to this section,
10 provide for a method of notice reasonably designed to give
11 actual notice to all parties who would be entitled to notice of a
12 meeting held pursuant to the articles, bylaws and this part,
whether or not the method results in actual notice to every such
person, or conforms to the notice requirements that would
otherwise apply. In a proceeding under this section the court may
determine who the members or directors are.

13 Helsing mailed copies of the secret ballot to all of the 40 members of the
14 Association. The location of these members was taken from property information obtained
15 from a title company. Sandhu Decl., ¶ 10. This method was, therefore, “reasonably designed
16 to give actual notice to all parties” entitled to notice.

17 **B. Application of Corp. Cd. §7515 Is Appropriate Because Operation of The**
18 **Association Has Proven “Impractical or Unduly Difficult” Under the**
Current Circumstances

19 Although legally formed, the Association never came to life in a practical
20 sense. Consequently, no authorized representatives have been chosen, and the Association
21 remains inactive. Members of the association have met informally several times, and have
22 attempted twice to formally hold an election to choose directors. The two attempts at an
23 election failed to receive the 22 votes necessary to meet the quorum requirements. Due to
24 apathy and, apparently, the desire to avoid paying monthly assessments, a majority of the
25 members have failed to return ballots to choose directors. Thus, under the current
26 circumstances, holding an election is impractical or unduly difficult. Corp. Cd. §7515.

27 The legislative intent of §7515 is recited in the *Greenback HOA* decision,
28 where the Court wrote:

1 The Assembly Select Committee on Revision of the Nonprofit
2 Corporations Code addressed in its report the problems of
3 nonprofit corporations which section 7515 was specifically
4 intended to remedy. *“Due to poor record keeping, inactivity for
5 a period of time, or other reasons, some nonprofit corporations
6 are unable to obtain a quorum of members or directors, or
7 accurately identify their members or directors, or comply with
8 the various provisions of their articles or bylaws. The New
9 [Nonprofit Corporation] allows a corporation upon obtaining
10 court approval, to extricate itself from this situation and restore
11 regularity in its organizational structure and operations.
12 Sections 5515 and 7515.”* (Report of Assem. Select Com.
13 on Revisoin of the Nonprofit Corporations Code (1979) p. 15.
14 *Greenback HOA*, supra, 166 Cal.App.3d 843, pgs. 848,849
15 (Emphasis added).

16 The legislative policy identified in this quotation from *Greenback HOA* is
17 clearly met by applying Corp. Cd. §7515 to the facts at hand. The Association was formed in
18 the context of the severe downturn in the housing market that occurred in 2008. Immediately
19 upon purchase of the lots, the value of these lots decreased dramatically, leaving the
20 homeowners with loans exceeding the value of the property. Many of the lots were later
21 foreclosed upon by the lenders or currently in the process of being foreclosed upon. Very
22 few of the lot owners (8 out of 40) actually built homes on the property. The original
23 developer not only failed to complete the project, but also failed to take the steps to make sure
24 that homeowners association became holding meetings. By 2011, however, many of the lot
25 owners realized that a properly functioning homeowners association was essential to the
26 subdivision. Sandhu Decl. ¶ 18.

27 The County of Alameda also relies upon such an Association to ensure that
28 facilities owned by the association are properly maintained. Declaration of William Lepere
in Support of Petitioners Motion to Intervene.

The Association needs to lower the quorum requirements so that it can, as
stated in the *Greeback HOA* decision, “extricate itself,” (*Greenback HOA*, supra, at 849)
from straight-jacket that is the current quorum requirement. It is for circumstances such as
these that §7515 was enacted by the California Legislature.

1 **IV. CONCLUSION**

2 For the reasons stated above herein, Petitioner, on behalf of the Association,
3 requests the Court to decrease the quorum requirements of the Association to permit the
4 recent secret election to be valid.

5 A decision to uphold the results of the present election is both fair and
6 reasonable. All members of the Association were given notice of the election and mailed the
7 secret ballots in full compliance with Civil Code § 1363.03. Although the number of ballots
8 cast is known, the votes on each of the ballots remains unknown, as the ballots have yet to be
9 opened. Petitioner is willing to accept the results of the secret ballot as tallied by Helsing
10 Group—regardless of the outcome.

11 Intervener prays for an Order as follows:

12 1. Dispensing with any requirement for a quorum for the following
13 elections: (1) the election initiated on January 18, 2012 to choose initial directors of the
14 Association, and, (2), future elections for a period of five years initiated by the Association's
15 members or directors; provided secret ballots are delivered to all record members pursuant to
16 Civil Code Section 1363.03;

17 2. Directing Helsing, acting as Inspector of Elections, to open, count and
18 tabulate the Secret Ballots in Helsing's possession which were cast by Members of the
19 Association as of February 27, 2012 at an open meeting of the Association to which all
20 members are given 10 days written notice;

21 3. Directing Helsing to determine the three persons who obtained the most
22 votes from these secret ballots, pursuant the Bylaws, CC&Rs, and California law without
23 consideration of whether a quorum was reached; and

24 ///

25 ///

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27 ///

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1 4. Appointing as a Director of the Association for a term of one year each
2 of the three top vote getters in the 14 secret ballots as determined by Helsing applying the
3 Bylaws, CC&Rs and California law as stated herein.
4

5 Dated: April , 2012

By: 

Sirjit Sandhu

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