

OPEN MEETING AGENDA ITEM

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April 13, 2015

Arizona Corporation Commission

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Arizona Corporation Commission
Attn: Jodi Jerich
1300 W. Washington St.
Phoenix, AZ 85007

ARIZONA CORP. COMMISSION
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RE: DII Emerald Springs, L.L.C., Docket Nos. WS-20794A-11-0140, WS-20794A-11-0279, and SW-20851A-12-0226

Dear Ms. Jerich,

This firm represents DII Emerald Springs, L.L.C. ("DII") in the litigation now pending in the Superior Court of Arizona, La Paz County, Case No. CV2013-00073 against Emerald Springs Homeowner's Association (the "HOA").

In accordance with Mr. Melendez' request regarding a status report of the above described case, please be advised as follows:

The last court appearance took place on March 20, 2015. This hearing had been scheduled to determine whether the HOA's, the Defendant in the above described case, Motion to Dismiss DII's Amended Complaint would be granted. After oral arguments were held on that date, the Court took the matter under advisement and on March 23, 2015 made the following Order:

"IT IS ORDERED that counsel, the parties, and any other persons who must approve a settlement, shall participate in a further good faith effort to settle this litigation, whether by a court sponsored settlement conference or a private mediation, which shall be completed on or before June 26, 2015.

Unless the parties agree to private mediation, a court-sponsored settlement conference is assigned to the Hon. Robert Carter Olson (Ret.), who is recalled to active judicial duty for purposes of this proceeding. Judge Olson may be contacted for scheduling purposes at rco@goldcanyonlaw.com (any email communication with Judge Olson shall be copied to opposing counsel), and he shall conduct the settlement conference in the La Paz County Superior Courthouse or a mutually agreeable location.

Docket Nos. WS-20794A-11-0140, WS-20794A-11-0279, and SW-20851A-12-0226

IT IS ORDERED that Plaintiff shall file a joint report on or before July 10, 2015, indicating whether the parties have reached a settlement, whether the parties request additional time for settlement efforts, or whether the parties have exhausted their efforts at settlement. The joint report shall not disclose the details of any pending settlement offers that have not been accepted.

IT IS ORDERED that all pending matters are not deemed submitted to the Court for ruling, until the parties have given notice that they have exhausted good faith settlement efforts.

IT IS FURTHER ORDERED setting this matter for Internal Review on April 20, 2015. No parties shall appear for the Internal Review; the Court shall review the file and issue such orders as are appropriate.”

We have not, as yet, determined whether the parties can agree on a mediator. It is more likely that an agreement cannot be reached and the court appointed mediator will be used.

This continues a long, drawn out legal battle between DII and the HOA. DII has submitted Interrogatories, Request for Production of Documents and Admission to be answered by the HOA. These are due on April 21, 2015. After review of responses a Deposition Schedule will be determined. It is DII's intent to continue to require the HOA to respond even though Arbitration is scheduled.

As you are aware, this case has been the subject of numerous motions, largely by the HOA, however, DII did file a Motion to Amend its Complaint and that Motion was granted. To date, all motions filed by the HOA have been denied, however, the pending motions before the Court await the outcome of the report by the mediator.

As stated above, DII's instructions to resolve this matter as quickly as possible are being followed. We will continue to be aggressive as instructed and will keep the Commissioner informed.

If you have any questions or wish further information please contact me or my senior paralegal Stanford Lerch at 602-254-2000 extension 218.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'A. Hauf', with a horizontal line extending to the right.

Adam E. Hauf, Esq.