

1 2. The Le Parc Community Association Is A Valid Entity
2 Which Is Not An Alter Ego of the Simi Valley Le Parc
3 Homeowners Association and Which
4 Should Not Be Added As A Judgment Debtor.

5 The fundamental concern of the OWNERS is that their properties and community are
6 protected. They want to maintain a healthy, safe, pleasant environment for themselves, their
7 families and tenants. Since the appointment of the receiver to control the financial responsibilities
8 of the Simi Valley Le Parc Homeowners Association, many bills have not been paid. The
9 development is in rapidly declining condition in terms of overall maintenance and repair. Many
10 home owners stopped or delayed paying their monthly assessments because they are not receiving
11 any benefit from those contributions as contemplated in the CC&Rs. After appointment of the
12 receiver it became apparent that the development could not continue to exist with Simi Valley Le
13 Parc Homeowners Association as the entity responsible for maintaining and repairing the
14 property. Because of the burden of the enormous ZM judgment on the Simi Valley Le Parc
15 Homeowners Association it became unable to successfully function as a homeowners association
16 is designed to function. It could not carry out its duties and responsibilities as required by the
17 CC&Rs and State law. The owners of properties clearly could not continue to live in a situation
18 where they were required by the CC&Rs to pay monthly amounts to the association, ostensibly to
19 cover the budgeted expenses for maintenance, upkeep and repair, but receive no or minimal
20 services. Consequently, it was necessary to sever the connection between owners and the Simi
21 Valley Le Parc Homeowners Association, effectively "firing" the corporation due to its
22 ineffectiveness in serving the basic needs of the home owners.

23 The owners followed the procedures available to them in the CC&Rs and State law to
24 improve their worsening situation. As established by the Declaration of Ellen Sandwick attached
25 to the Consolidated Responses To ZM's Motions for Special Assessment, Addition of Defendant,
26 and Injunction filed on May 3, 1999, by the Simi Valley Le Parc Homeowners Association, a
27 Petition was signed by more than 5% of the owners and presented to the Board of Directors of
28 the Simi Valley Le Parc Homeowners Association on February 2, 1999. The Petition requested a

1 vote be held for the purpose of "dissolving the Association and, in addition, for the purpose of
2 amending the CC&Rs of the development to replace the Simi Valley Le Parc Homeowners
3 Association as the management association for the tract." In response thereto, and in accordance
4 with Sections 7511(c) and 7513(a) of the Corporations Code, an amendment was distributed to
5 the owners and a vote was taken on its approval or disapproval. Section 1355(a) of the Civil
6 Code provides the CC&s may be amended "pursuant to the governing documents or this title."
7 Section 15.2 of the CC&Rs provides the Declaration may be amended "in any respect or revoked"
8 with the consent of at least 75% of the owners.

9 By March 30, 1999, votes in excess of the 75% required (over 200 of the 264 owners)
10 had been received. On March 31, 1999, an unincorporated association, the Le Parc Community
11 Association, was duly formed. On March 31, 1999, the CC&Rs were amended upon recordation
12 of the Amendment in the Office of the County Recorder for the County of Ventura. The Le Parc
13 Community Association was thereby "hired" to manage the Le Parc development. It became
14 responsible for all of the obligations imposed upon it by the CC&Rs and State law. It also
15 became empowered to impose and collect the assessments necessary to pay for the services and
16 other essential expenses.

17 The owners of Le Parc units were not compelled by any statute or other principle to retain
18 the Simi Valley Le Parc Homeowners Association as its management association. It made no
19 sense, as a practical matter, to continue to voluntarily maintain its relationship with the
20 corporation, given its inability to perform. The owners took steps to protect themselves. This
21 was done in good faith, openly, and without any intention of deceiving or defrauding anyone.

22 The case law cited by ZM in its moving and responsive papers concerning fraud is
23 inapplicable to the present situation. The owners did not, by their actions, fraudulently try to
24 avoid paying a lawful debt. The fact is that, based on section 7350 of the Corporations Code, the
25 individuals were not liable for the debt in the first place. Thus, they logically could not take
26 fraudulent action to avoid paying their debt. Moreover, the Simi Valley Le Parc Homeowners
27 Association itself committed no fraud because it did not participate in the action to amend the
28

1 CC&Rs or to create the Le Parc Community Association. ZM fails to show any factual basis for
2 fraud.

3 Similarly, the cases cited by ZM dealing with corporate successor liability and the alter
4 ego doctrine fail to establish that the Le Parc Community Association and the Simi Valley Le Parc
5 Homeowners Association should rightfully be considered as one and the same for purposes of
6 enforcing its judgment. The cases establish that alter ego and successor liability situations require
7 as one element in the analysis the transfer of the corporation's assets without adequate
8 consideration. In the case of the Simi Valley Le Parc Homeowners Association there simply were
9 no assets for the debtor to transfer to another entity. Furthermore, the Simi Valley Le Parc
10 Homeowners Association took no action which can reasonably be construed as a transfer of
11 anything.

12 The Court in *In re General Teamsters, Warehousemen and Helpers Union Local 890*,
13 *supra*, found that the Debtor's right to receive future dues from its members was not an asset with
14 any economic value. The applicable statute provides the

15 ..officers,...and other representatives of a labor union occupy positions of trust in relation
16 to such organization and its members as a group. It is, therefore, the duty of each such
17 person...to hold its money and property solely for the benefit of the organization and its
18 members, and to manage, invest, and expend the same in accordance with its constitution
19 and bylaws and any resolutions of the governing bodies adopted thereunder....

20 29 U.S.C. 501(a), cited at 225 B.R. at 734. Consequently, the right to receive future dues
21 "represents an interest in bare legal title to dues collected and nothing more could become
22 property of the bankruptcy estate." *Id.*, at 734-735. This situation is clearly analogous to that
23 involving the homeowner association and its members.

24 Even if, for the sake of argument, the combination of the CC&R amendment, the creation
25 of the Le Parc Community Association, and the resultant empowerment of the Le Parc
26 Community Association, exclusively, to impose and collect assessments, taken together, were
27 somehow seen as a transfer by the association of the right to collect money each month, it must be

1 remembered that an association's ability to collect monthly dues does not exist in a vacuum. The
2 ability to collect funds is inescapably coupled with the obligation to expend those funds

3 exclusively to promote the recreation, health, safety, and welfare of the members of the
4 Association, the improvement, replacement, repair, operation and maintenance of the
5 Common Area and the performance of the duties of the Association as set forth in [the
6 CC&Rs].

6 (CC&Rs, Article 6, Section 6.3.) As a result, the "net value" of this assessment ability is zero.

7 Both before the "transfer" and after the "transfer" the association lacked the ability to pay the
8 judgment debt.

9 Thus, in the case of a nonprofit corporation serving as a homeowners association there
10 can be no transfer of a valuable asset for inadequate consideration to the detriment of a creditor.
11 The traditional tests for alter ego and successor liability are based on transactions between for-
12 profit corporations which actually have assets to transfer. Application of those analyses to the
13 situation at hand do not produce the result proposed by ZM.

14
15 3. Based Upon The Equities in This Matter The Le Parc
16 Community Association Must Be Allowed
17 To Function As The Management Entity
18 For the Le Parc Development
19 Without Interference From ZM.

20 Simi Valley Le Parc consists of 264 condominium units. It is one of an enormous number
21 of common interest developments in California. The issue facing this Court, whether individual
22 homeowners can be compelled to pay the debt of a homeowner association which accorded them
23 no benefit, is of enormous significance statewide and probably nationwide as well. Even as long
24 ago as 1986 the Supreme Court of California took

25 judicial notice of the fact that a rapidly growing share of California's population reside in
26 condominiums, cooperatives and other types of common-interest housing projects.
27 Homeowner associations manage the housing for an estimated 15 percent of the American
28 population and, for example, as much as 70 percent of the new housing built in Los
Angeles and San Diego Counties. [citation] Nationally, 'they are growing at a rate of
\$5,000 per year and represent more than 50% of new construction sales in the urban
areas. Projects average about 100 units each, so the associations affect some 10 million
owners.' [citation]. Housing experts estimate that there already are 15,000 common-
interest housing associations in California. While, in most of the larger projects the

1 maintenance of common areas is truly cooperative, in most of the larger projects control
2 of the common area is delegated or controlled by ruling bodies that do not exercise the
members' collective will on a one-person, one-vote basis.

3 *Frances T. v. Village Green Owners Association*, (1986) 42 Cal. 3d 490, 500 fn 9, cited in
4 *Franklin v. Marie Antoinette Condominium Owners Association, Inc.*, (1993) 19 Cal. App. 4th
5 824, 830.

6 An individual who chooses to live in a common interest development purchases his/her
7 interest with certain expectations. It is clear in the CC&Rs that the owner of a unit will be
8 required to conform to certain rules of conduct imposed by fellow owners. Also, an owner
9 expects to pay monthly assessments to cover common expenses such as utilities, maintenance,
10 cleaning, trash pickup, security and insurance. As discussed in Section 1, above, an owner does
11 not reasonably expect to be personally liable for torts concerning his/her common interest in the
12 development. (See, Declaration of Sandra Pizano, attached to the Consolidated Responses To
13 ZM's Motions for Special Assessment, Addition of Defendant, and Injunction filed on May 3,
14 1999, by the Simi Valley Le Parc Homeowners Association.)

15 The OWNERS have an obvious interest in seeing that their association pays for essential
16 services. Without such services, they risk safety hazards, health hazards and further reduction in
17 property values. ZM imposed a receiver on the development in order to divert the monthly
18 assessments to ZM. Without a means to provide essential services the development and its
19 inhabitants will continue to suffer from accumulation of trash and debris, unclear water in pools
20 and spas, overgrown shrubs and branches, clogged rains, fire hazard from weeds and overgrowth,
21 land erosion due to depletion of watershed previously prevented by landscaping and overall
22 decline in property values.

23 The emotional toll on the residents, seeing their homes and neighborhood physically
24 decline, while facing the uncertainty of the future of their environs, has been great. Many of the
25 residents are senior citizens on fixed incomes who simply cannot afford to pay additional
26 assessments and therefore risk losing their homes. As shown by the evidence attached to the
27

1 Consolidated Responses To ZM's Motions for Special Assessment, Addition of Defendant, and
2 Injunction filed on May 3, 1999, by the Simi Valley Le Parc Homeowners Association,
3 specifically the Declaration of Jack-Lynn Sawyer, CCLS, many residents have little or no equity
4 in their property and have no means by which to pay additional assessments.

5 Some owners acquired their properties after the 1994 earthquake, after the actions took
6 place which gave rise to the judgment, and some even after the judgment was entered. It is
7 patently unfair to hold these individuals liable for tortious conduct and breach of contract which
8 occurred before they even purchased their interests in the development. The statute which
9 provides that the holder of title at the time an assessment is made is liable to pay such assessment
10 makes sense because the assessment, by statute and the CC&Rs, is by its very nature designed to
11 benefit the homeowner. If an assessment can be made which confers no benefit on the assessee
12 whatsoever, only burdens, it is particularly unfair to punish recent buyers with no connection
13 whatsoever to the association which was a party to the arbitration proceeding.

14 While acknowledging the general premise that a person owed money is entitled to be paid,
15 in some instances this simply cannot happen. Generally, when a judgment debtor is insolvent, the
16 debt will and must go unpaid. When a judgment debtor is a corporation with no assets with
17 which to satisfy a debt and no ability to earn income in the future, the debt must go unpaid.
18 Parties doing business with other parties are well-advised to take into consideration at the outset
19 the likelihood the obligations contracted for can be met. In this case, when ZM contracted with
20 the Simi Valley Le Parc Homeowners Association, it was certainly aware that the association had
21 virtually no assets. ZM contracted with the association at its own risk. ZM did not take any
22 additional steps to protect its position such as requiring individual home owners or other parties
23 to personally guarantee payment under the contract. The individuals residing at Le Parc did not
24 have the opportunity to decide whether or not to be guarantors. There is no authority for the
25 proposition that the residents should be involuntary sureties or guarantors. The individuals were
26 not parties to the contract and have no nexus to ZM. To hold an individual home owner liable for
27 this corporate debt would be unjust and inequitable and unsupported by the law.

1 WHEREFORE, the OWNERS of Le Parc homes respectfully request the Court:

2 (1) grant the application of Simi Valley Le Parc Homeowners Association for an
3 injunction prohibiting ZM from attempting to seize any assets of the Le Parc Community
4 Association or interfering in its affairs;

5 (2) deny the application of ZM for an injunction preventing Le Parc Community
6 Association from making and collecting assessments and fulfilling its responsibilities to manage,
7 maintain and repair the common areas of the Le Parc development;

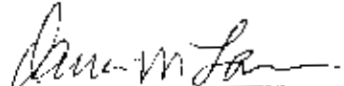
8 (3) deny the motion of ZM for an order to levy a special assessment;

9 (4) deny the motion of ZM to amend its judgment to add Le Parc Community Association
10 as a judgment debtor; and

11 (5) for such other and further relief as the Court may deem just and proper.
12

13 Respectfully submitted,

14
15
16 Dated: May 5, 1999



DARREN M. LARSEN
Counsel for Owners of Le Parc Homes

1 PROOF OF SERVICE

2 I, Darren M. Larsen, declare:

3 I am a citizen of the United States and resident or employed in Ventura County,
4 California. My business address is 1200 Paseo Camarillo, Suite 160, Camarillo, California 93010.

5 I am over the age of eighteen years, and I am counsel for the amici curiae in the above-entitled
6 action. On May 6, 1999, I personally served a copy of the following:

7 BRIEF OF OWNERS OF HOMES IN LE PARC SIMI VALLEY, AS AMICI CURIAE,
8 IN OPPOSITION TO ZM CORPORATION'S MOTION TO AMEND JUDGMENT TO
9 INCLUDE "LE PARC COMMUNITY ASSOCIATION" AS JUDGMENT DEBTOR,
10 MOTION FOR ORDER TO LEVY A SPECIAL ASSESSMENT and APPLICATION
FOR INJUNCTION; STATEMENT IN SUPPORT OF APPLICATION BY SIMI
VALLEY LE PARC HOMEOWNERS ASSOCIATION FOR INJUNCTION AS
AGAINST RECEIVER

11 by delivering it to the following parties at the following addresses:

12 Counsel For Defendant/Petitioner

13 Glenn J. Campbell

14 LOWTHORP, RICHARDS, MCMILLAN,

15 MILLER, CONWAY & TEMPLEMAN

300 Esplanade Drive, Suite 850

Oxnard, CA 93031

Counsel For Plaintiff/Respondent

James P. Lingl

KNOPFLER & ROBERTSON

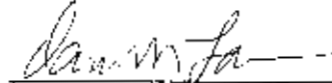
A Professional Law Corporation

1200 Paseo Camarillo, Suite 170

Camarillo, CA 93010

16 I certify, under penalty of perjury, that the foregoing is true and correct.

17 This certificate is executed on May 6, 1999, at Camarillo, California.

18 
19 DARREN M. LARSEN