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SIMI VALLEY LE PARC HOMEOWNERS ASSOCIATION
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA
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11 SIMI VALLEY LE PARC HOMEOWNERS) CASE NO. CIV 159037
ASSOCIATION,)
12) Assigned for all purposes to
Plaintiff/Respondent,) the Honorable JOHN J. HUNTER
13)
vs.) OPPOSITION TO EX PARTE
14) APPLICATION FOR ORDER
ZM CORPORATION, dba QWIKRESPONSE) APPOINTING RECEIVER AND ORDER
15 DISASTER CONTROL AND) TO SHOW CAUSE WHY APPOINTMENT
CONSTRUCTION,) SHOULD NOT BE CONFIRMED;
16) DECLARATION OF JAMES P. LINGL
Defendant/Petitioner.)
17) Date: January 29, 1999
18) Time: 8:30 A.M.
19) Dept.: 32
20)

21 Respondent/Plaintiff, Simi Valley Le Parc Homeowners
22 Association [hereinafter "Association"], opposes the Application
23 for Appointment of a Receiver by Petitioner/Defendant, ZM
24 Corporation [hereinafter "ZM"], on the basis that there is no
25 adequate showing of any danger of loss, removal or material
26 injury to any property of the Association to which ZM may have
27 any entitlement that would warrant the appointment, on the basis
28 that the effect of such appointment would be contrary to the

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1 a 'community association' within the meaning of CC §1363(a).
2 Pursuant to CC §1364(a) the Association has the affirmative
3 statutory responsibility "for repairing, replacing and
4 maintaining the common areas" of the Le Parc condominium
5 development.

6 As shown in the Petitioner's application, the purpose of the
7 appointment of a receiver in this case, at this time, is for that
8 receiver to be in a position to divert to ZM the assessments
9 which are being paid by homeowners within the Le Parc condominium
10 complex for the repair, replacement and maintenance of the common
11 areas of the common interest development.

12 On page 3 of the Ex Parte Application, beginning with line
13 7, Petitioner explains the plan to divert the homeowners'
14 assessment payments to ZM where it states that "...a receiver
15 should be immediately appointed to take control of the debtor's
16 receipt of assessments to apply against the outstanding judgment
17 [of ZM] as appropriate."

18 This unprecedented diversion of homeowner assessments in
19 disregard of the Legislative mandates set forth in CC §1364(a)
20 would completely frustrate the ability of the Association to
21 carry out its responsibilities pursuant to statute and the CC&Rs
22 of the common interest development, and would thus be contrary to
23 public policy.

24 BALANCING OF INTERESTS

25 One need not be insensitive to the desire of ZM to have its
26 judgment satisfied while still maintaining that the receivership
27 sought by this application should not be granted. An arbitration
28 award has been entered in ZM's favor and confirmed by this Court.

1 This is a serious matter. But, at the same time, one cannot
2 wholly ignore the consequences of appointment of a receiver on
3 the innocent third parties who will be directly and immediately
4 injured by diversion of their assessment payments, the owners of
5 the condominium units within the Le Parc condominium development.

6 The Association is not a 'for profit' corporation whose
7 greedy shareholders and overpaid executives will be made to
8 suffer if the receivership is granted. The Association is not an
9 entity whose directors will lose out on stock options or whose
10 officers will miss bonuses. The Association is a "community
11 association" whose sole reason for existence is the management of
12 the common areas of a common interest development.

13 There are 264 homes in the Le Parc common interest
14 development. Those 264 homes, along with the owners and
15 residents of those 264 homes, are the persons who will be
16 directly and immediately injured by the appointment of a receiver
17 and diversion of their ongoing assessment payments. Those
18 homeowners are not even parties to this action. And those
19 homeowners have no personal liability for the judgment against
20 the Association.

21 There is no balance, there is no proportion, in the order
22 sought by Petitioner. The Association has duties to its members,
23 has responsibilities to homeowners within the development, and
24 has obligations to ZM. The Association cannot ignore and must
25 not be deprived of its ability to carry out all of its other
26 duties and responsibilities so that it can satisfy its
27 obligations to a single creditor. There must be some balance

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1 between all of these competing interests; that balance is not
2 served by appointment of a receiver.

3 DISSIPATION OF ASSETS

4 It is presumed that the receiver sought to be appointed in
5 this proceeding will be compensated for his services as a
6 receiver. To the extent that the Association has any excess
7 revenue over and above its normal operating expenses as required
8 to comply with its statutory duties, those funds are potentially
9 available to pay toward the ultimate satisfaction of ZM's claim.
10 However if a receiver is appointed, unless that person is
11 compensated at the same rate as the unpaid directors of the
12 Association, the amount of 'excess' will be diminished and the
13 whole purpose of appointment of the receiver will have been
14 defeated. Common sense, good public policy and simple math all
15 coincide to suggest that appointment of a receiver to take over
16 the affairs of the Association, thereby further impairing the
17 ability of the Association to function or to satisfy ZM's claim,
18 is simply not warranted in this matter.

19 For all of the above reasons, Respondent Simi Valley Le Parc
20 Homeowners Association respectfully requests that the Ex Parte
21 Application of Petitioner be rejected.

22 Dated January 29, 1999.

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25 JAMES P. LINGL, Attorney for
Simi Valley Le Parc HOA