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INDEX

WITNESSES

(NONE)

EXHIBITS

(NONE)

1 CASE NUMBER: BS169638  
2 CASE NAME: RESIDENTS FOR OPEN BOARD  
3 ELECTIONS, ET AL. VS. PALOS  
4 VERDE HOME  
5 LOS ANGELES, CALIFORNIA THURSDAY, FEBRUARY 15, 2018  
6 DEPARTMENT 72 HON. RUTH ANN KWAN, JUDGE  
7 REPORTER: SABA MC KINLEY, CSR NO. 9051  
8 TIME: 9:43 A.M.  
9

10 (THE FOLLOWING PROCEEDINGS  
11 WERE HELD IN CHAMBERS.)  
12  
13

14 MR. DVEIRIN: GOOD MORNING, YOUR HONOR.  
15 IT'S GOOD TO SEE YOU. BRANT DVEIRIN FROM LEWIS  
16 BRISBOIS --

17 THE COURT: GOOD TO SEE ALL OF YOU.

18 MR. DVEIRIN: -- ON BEHALF OF THE RESPONDENT  
19 PALOS VERDE HOMES ASSOCIATION WITH MY TRUSTED COMPANION  
20 AND LEARNED ASSOCIATE, SARA ATSBABA. AND THEN --

21 MR. LEWIS: GOOD MORNING, YOUR HONOR. I'M  
22 TRUSTED AND LEARNED AS WELL. JEFF LEWIS.

23 MR. DVEIRIN: YES, HE IS. HE IS.

24 THE COURT REPORTER: MAY I HAVE YOUR NAME FOR  
25 THE RECORD, PLEASE.

26 MS. ATSBABA: SARA ATSBABA.

27 THE COURT REPORTER: SPELL IT, PLEASE.

28 MS. ATSBABA: A-T-S-B-A-H-A.

1 THE COURT: YOU GOT 40%, HUH?

2 MR. DVEIRIN: YEAH, WELL, IT'S A LITTLE BIT  
3 OFF, JUST A BIT OF CORRECTION TO THAT BECAUSE WE -- IT  
4 WAS -- IT JUST HAPPENED THE OTHER DAY.

5 ACTUALLY WHEN WE GET THE 2194 VOTES, WE CHECK  
6 TO SEE IF THEY'RE VALID. WE KNOW THE VALID VOTES. WE  
7 ACTUALLY HAVE 2147. IT'S ACTUALLY 39.6%.

8 THE COURT: OKAY.

9 MR. DVEIRIN: BUT WE DIDN'T KNOW THAT UNTIL  
10 YESTERDAY LATE BECAUSE WE RELY ON MOSS ADAMS TO CHECK  
11 THE ACCURACY OF THE VOTE. SO IT WENT DOWN JUST A  
12 PINCH -- BUT IT'S ABOUT 40%.

13 AND WE WERE ACTUALLY VERY PLEASED WITH THAT TO  
14 BE FRANK.

15 AND THE -- YOU KNOW, THE FIRST ROUND WAS  
16 INTERESTING BECAUSE THE FIRST ROUND SHOWS THAT THERE'S  
17 BEEN A STEADY DECLINE OF THREE YEARS ON THIS ISSUE OF  
18 THE SALE OF THE PARK LAND. AND THE --

19 AND SO MY CLIENTS HEARD LOUD AND CLEAR THAT YOU  
20 WANTED TO DO -- THEM TO KEEP TRYING. AND THESE ROUNDS  
21 ARE EXPENSIVE. THEY DID A SECOND ROUND. THERE WAS A  
22 LOT OF NOTICES THAT WENT OUT. SECOND BALLOTS WENT TO  
23 EVERYBODY THAT DIDN'T TURN IN A BALLOT. A LOT OF  
24 LETTERS WENT OUT, BOTH FROM COLBY AND FROM US  
25 ENCOURAGING PEOPLE TO VOTE.

26 AND THERE IS -- AND THEN WE GOT TO 40%, WHICH  
27 IS PRETTY HIGH.

28 THE COURT: WHERE DO YOU BOTH SUGGEST THAT WE

1 GO FROM HERE, ABSENT A RULING FROM ME AT THIS POINT?

2 MR. DVEIRIN: I WOULD --

3 SINCE I --

4 I WOULD SAY THAT IF IT WERE ME, I WOULDN'T  
5 TOUCH US WITH A TEN-FOOT POLE, BUT I WOULD DO IT BASED  
6 ON MY REPRESENTATION TO YOU THAT I'VE BEEN COUNSEL FOR  
7 THE P.V.H.A. FOR ALMOST 10 YEARS NOW. I HAVE NO  
8 INTENTION OF LEAVING, UNLESS I BE TERMINATED FOR SOME  
9 REASON, AND THAT I WOULD ADVISE THEM, BASED ON WHAT I'VE  
10 SEEN HERE, TO -- IN FUTURE YEARS, TO DO AT LEAST TWO  
11 BALLOTS BECAUSE THEY ARE EXPENSIVE. AND IF THEY DO TWO  
12 ROUNDS AND THERE'S AN INTEREST OF ISSUE, SUCH AS AN  
13 ASSESSMENT OR SOMETHING THAT REALLY GALVANIZES PEOPLE,  
14 THEY WILL GET TO 50%.

15 BUT IN LIGHT OF THE FACT THAT THEY'RE -- 50% OF  
16 THE TIME OVER THE LAST 30 YEARS WE'VE GOTTEN QUORUMS,  
17 AND WITH TWO ROUNDS WE GOT TO 40%, IT SEEMS TO ME THAT  
18 THERE'S NOT THE UNRULY, DIFFICULT, IMPRACTICAL SITUATION  
19 THAT'S IDENTIFIED IN THE STATUTE, AND WE SHOULD JUST  
20 LEAVE IT ALONE.

21 THE COURT: I'M SURE HE SEES IT DIFFERENTLY.

22 MR. LEWIS: YEAH. YOU KNOW, THIS IS THE NINTH  
23 YEAR OF NO ELECTIONS. NINE YEARS. ONE OF THE GUYS IS  
24 OUT THERE IN THE AUDIENCE. HE'S BEEN SERVING ON THE  
25 BOARD FOR 20 YEARS. HE'S THE PRESIDENT, 20 YEARS. WE  
26 HAVEN'T HAD AN ELECTION IN NINE YEARS. SO I WOULD  
27 SUGGEST THE QUORUM BE LOWERED.

28 WE HAVE TWO SETS OF VOTES. WE HAVE THIS YEAR'S

1 VOTES, AND WE HAVE LAST YEAR'S VOTES SITTING THERE THAT  
2 HAVEN'T BEEN OPENED --

3 THE COURT: WELL, I'M NOT TOUCHING LAST YEARS'S  
4 VOTES.

5 MR. LEWIS: OKAY.

6 THE COURT: OKAY? NO, NO, NO, NO, NO.

7 MR. LEWIS: SO ONE OF THE OPTIONS IS WE OPEN  
8 THOSE VOTES AND WE SEAT THE PEOPLE --

9 MY GUYS HAVE ALWAYS SAID IF THEY HAVEN'T WON  
10 THE VOTE, THEY'RE GOING TO DROP THIS CASE. ALL THEY  
11 CARE ABOUT IS HAVING THE VOTES COUNTED. THEY DON'T CARE  
12 IF THEY WIN OR NOT. SO LET'S JUST COUNT THE VOTES THAT  
13 ARE THERE, SEE WHO WINS AND SEAT PEOPLE IN STAGGERED  
14 TERMS, SO THERE'S NO DISRUPTION. WE DON'T WANT TO,  
15 LIKE, UNSEAT THE MAJORITY -- EXCUSE MY HAND.

16 SO WE'D LIKE THE VOTES THAT ARE SITTING THERE  
17 TO BE COUNTED.

18 MR. DVEIRIN: THE PROBLEM IS -- AND I'M NOT  
19 UNSYMPATHETIC TO THAT ARGUMENT.

20 I THINK -- YOU HAVE TO UNDERSTAND THAT THE  
21 BYLAWS CAN'T BE CHANGED UNLESS THERE'S A 75% VOTE.

22 WHAT I -- AND I'VE SAID THIS TO THE CLIENTS.  
23 WE COULD ENTER INTO SOME SORT OF INFORMAL AGREEMENT TO  
24 COUNT THE VOTES SO THAT MAYBE THEY COULD SEE THAT THEY  
25 DON'T GET -- THEY DIDN'T GET A LOT OF VOTES --

26 THE COURT: I WAS GOING TO SAY THAT. I WAS  
27 WONDERING IF YOU CAN ENTER INTO AN INFORMAL AGREEMENT.  
28 THE VOTE CAN BE LOOKED AT.

1 MR. DVEIRIN: YEAH, WE COULD.

2 THE COURT: BUT NOT COUNT AS AN ELECTION.

3 MR. DVEIRIN: WE CAN'T COUNT IT --

4 MR. LEWIS: WE'VE ASKED.

5 THE COURT: NO, NO --

6 MR. DVEIRIN: WE CAN'T COUNT IT AS ELECTION --

7 THE OTHER THING IS, TOO, IS EVERYBODY THAT VOTED IN THIS  
8 ELECTION -- THIS IS -- THIS GETS -- THIS IS WHY HOA LAW  
9 IS COMPLICATED. EVERYBODY THAT VOTED IN THIS ELECTION  
10 VOTED BASED ON THE 50% QUORUM THAT EXISTS. SO EVEN TO  
11 THE EXTENT YOU COULD CHANGE THE QUORUM TO, LIKE, 40%, IT  
12 WOULD HAVE TO APPLY TO THE NEXT ELECTION.

13 WE'RE DONE WITH THIS ELECTION --

14 THE COURT: I UNDERSTAND THAT.

15 BUT THE THING IS, IS THIS --

16 MR. DVEIRIN: BUT WE COULD COUNT THE VOTES  
17 INFORMALLY.

18 THE COURT: OKAY. THESE ARE MY OTHER  
19 PROPOSALS:

20 MR. DVEIRIN: YEAH.

21 THE COURT: DO A THIRD ROUND.

22 MR. LEWIS: BECAUSE WE'RE CLOSE.

23 THE COURT: WELL, IT'S NOT THAT CLOSE. 10% IS  
24 NOT THAT CLOSE.

25 MR. DVEIRIN: IT'S NOT THAT CLOSE AND YOU  
26 GET -- WE GET LESS --

27 THE COURT: WHAT WAS THE PERCENTAGE BEFORE THE  
28 SECOND ROUND?

1 MR. DVEIRIN: THE SECOND ROUND WAS --

2 THE COURT: FIRST ROUND WAS HOW MUCH?

3 MR. DVEIRIN: FIRST ROUND, I HAVE IT HERE.

4 MR. LEWIS: IT WAS 1397 VOTES. I DON'T HAVE  
5 THE PERCENTAGE. BUT IT'S 1397 VOTES, WHICH IS --

6 THE COURT: WELL, IT INCREASED SUBSTANTIALLY.

7 MR. DVEIRIN: IT INCREASED ABOUT --

8 THE COURT: SO QUITE A BIT.

9 MR. DVEIRIN: -- I DON'T KNOW, LIKE 8, 900  
10 VOTES, OR SOMETHING.

11 THE COURT: THAT'S A LOT.

12 MR. DVEIRIN: NO, I KNOW, BUT I'M SAYING IS --  
13 IT'S THE -- IT'S THE LAW OF DIMINISHING RETURNS IS THAT  
14 WHEN YOU DO IT -- AND THEY'RE EXPENSIVE, LIKE, 15, 20  
15 GRAND EACH ROUND. YOU HAVE TO PAY MOSS ADAMS, YOU'VE  
16 GOT TO PAY JUDGE LATIN TO OVERSEE MOSS ADAMS, WE'VE GOT  
17 TO PAY LATIN TO CERTIFY THE RESULTS.

18 SO WE PUT UP THE MONEY TO DO AN ADDITIONAL  
19 ROUND. AND WE DID OUR VERY BEST TO GET TO THAT POINT.  
20 IF THE -- IT JUST -- AT SOME POINT IN TIME, THEY HAVE TO  
21 STOP AND SEAT A BOARD. THEY HAVE BUSINESS THAT THEY  
22 HAVE TO CONDUCT.

23 SO THEY TOOK THE COURT'S RECOMMENDATION AND  
24 THEY DID A SECOND ROUND. AND THEY ACTUALLY THOUGHT --  
25 AND I THINK HARVESTON THOUGHT EITHER -- AS WELL BECAUSE  
26 HARVESTON AND SCHOTT, HIS CLIENTS, SENT OUT EMAILS TO  
27 EVERYBODY, ENCOURAGING THEM TO VOTE.

28 THERE'S JUST NOT THE SORT OF -- IN MY VIEW --



1 INTEREST IN THE ISSUE THAT THESE PEOPLE HAVE TO GET TO  
2 50%.

3 MR. DVEIRIN: BUT IT'S NOT FROM A LACK OF  
4 TRYING.

5 THE COURT: OKAY, OKAY.

6 MR. DVEIRIN: THE TWO ROUNDS SHOW THAT.

7 I STILL WOULDN'T TOUCH IT. I DON'T THINK IT  
8 MEETS THE STANDARD.

9 THE COURT: THAT'S ONE OPTION.

10 MR. DVEIRIN: BUT I WOULD BE UP TO INFORMALLY  
11 COUNTING VOTES --

12 THE COURT: THE SECOND --

13 (REPORTER CLARIFICATION.)

14 MR. DVEIRIN: I WOULD BE INCLINED TO  
15 RECOMMEND AN INFORMAL COUNTING OF VOTES --

16 THE COURT: BECAUSE THAT WILL HELP ME DECIDE  
17 WHETHER TO TOUCH THIS OR NOT.

18 MR. LEWIS: IT WOULD HELP ME, YOUR HONOR.

19 THE COURT: EXACTLY.

20 CAN WE DO AN INFORMAL COUNTING OF THE VOTES BUT  
21 WITH THE UNDERSTANDING THAT THIS VOTE IS NOT COUNTING  
22 TOWARDS THIS ELECTION. THIS ELECTION IS OVER. IT'S  
23 JUST --

24 MR. LEWIS: IT'S EVIDENCE.

25 THE COURT: BUT IT'S JUST TO ASSIST THE COURT  
26 IN MAKING A DECISION.

27 MR. LEWIS: IT WOULD BE LIKE EVIDENCE.

28 THE COURT: HOW IS THAT?

1 MR. DVEIRIN: I WOULD RECOMMEND TO MY  
2 CLIENTS -- I HAVE TO GET THEIR CONSENT. I CAN BRING  
3 THEM IN HERE IF YOU'D LIKE.

4 THE COURT: NO, I DON'T WANT TO BE PART OF YOUR  
5 CLIENT'S CONVERSATION WITH YOU.

6 MR. DVEIRIN: NO, I KNOW, BUT I WOULD RECOMMEND  
7 TO THEM THAT THEY DO AN INFORMAL COUNT WITH THE  
8 UNDERSTANDING THAT THAT MIGHT HELP SETTLE THIS CASE OR  
9 RESOLVE THIS CASE.

10 THE COURT: AND ALSO HELP THE JUDGE --

11 MR. DVEIRIN: AND HELP THE JUDGE HELP US DO  
12 THAT. BUT IT DOESN'T NECESSARILY COUNT -- IT CAN'T  
13 COUNT AS THE VOTE FOR THIS ELECTION BECAUSE IT  
14 DOESN'T --

15 THE COURT: RIGHT.

16 MR. DVEIRIN: -- REACH THE QUORUM. BUT I DON'T  
17 MIND RECOMMENDING THEM TO INFORMALLY COUNT THE VOTE.  
18 WE'VE ACTUALLY TALKED ABOUT THIS.

19 THE COURT: WHAT ABOUT YOU? YOUR CLIENT WILL  
20 BUY IN ON THAT?

21 MR. LEWIS: ABSOLUTELY. MY ONLY CAVEAT,  
22 YOUR HONOR IS -- I UNDERSTAND WHAT YOU ARE SAYING ABOUT  
23 NOT GOING BACKWARDS AND LOOKING FORWARDS --

24 THE COURT: OKAY. OKAY. IF YOU THINK THAT  
25 OPENING THIS IS GOING TO HELP COUNT FOR THIS YEAR, NO.

26 MR. LEWIS: CORRECT.

27 THE COURT: THAT'S NOT GOING TO HAPPEN.

28 MR. LEWIS: I HEAR THE COURT.

1 SO WHAT MY POINT IS, THOUGH, DO WE HAVE TO WAIT  
2 UNTIL JANUARY 2019 TO CALL ANOTHER ELECTION? MY READING  
3 OF THE STATUTE IS YOU CAN CALL A MEETING WHENEVER. YOU  
4 CAN CALL IT TOMORROW IF YOU WANTED.

5 THE COURT: COUNSEL, THEY SPENT A LOT OF MONEY  
6 FOR THIS ONE ELECTION. IF YOUR GUY THINKS HE'S GOING TO  
7 WIN, HE'LL WIN NEXT TIME.

8 OKAY? AND, NO, I AM NOT GOING TO CALL -- HAVE  
9 THEM CALL AN EARLY ELECTION.

10 MR. LEWIS: OKAY. I THINK COUNTING VOTES IS A  
11 GREAT IDEA, YOUR HONOR.

12 THE COURT: IS YOUR CLIENT HERE SO THAT THEY  
13 CAN GET A BUY IN?

14 MR. LEWIS: HE WASN'T HERE WHEN I CAME IN. I  
15 ASKED HIM TO BE HERE TODAY. TRAFFIC WAS HEAVY. I CAN  
16 GO LOOK --

17 THE COURT: YOU WANT TO LOOK FOR A SECOND?

18 MR. LEWIS: -- AND SEE IF HE'S HERE.

19 THE COURT: WE WON'T TALK ABOUT YOU.

20 MR. LEWIS: I SWEAR. HE IS HERE.

21 THE COURT: OKAY. SO ALL OF YOU GO AND TALK TO  
22 YOUR CLIENT.

23 DO YOU WANT TO MAKE IT QUICK BECAUSE I'M GOING  
24 TO HAVE A LONG HEARING?

25 MR. DVEIRIN: YES, I SAW THEM ALL OUTSIDE.

26 THE COURT: YES.

27 (A RECESS WAS TAKEN)

28 THE COURT: ARE WE GOOD?

1 MR. DVEIRIN: THIS IS BRANT DVEIRIN AGAIN FOR  
2 THE PALOS VERDE HOMES ASSOCIATION. I SPOKE TO BOTH  
3 CLIENT REPRESENTATIVES OUT THERE. AND THEY'RE FINE WITH  
4 AN INFORMAL COUNT. AND WE WILL FURTHER ADVISE THE COURT  
5 IN ANOTHER STATUS REPORT WHAT THAT INFORMAL COUNT IS AS  
6 SOON AS IT'S DONE.

7 THE COURT: ARE YOU OKAY?

8 MR. LEWIS: I EXPLAINED IT TO MY CLIENT. AND  
9 WE THINK -- WE BOTH THINK THERE WOULD BE VALUE IN HAVING  
10 THOSE VOTES COUNTED.

11 THE COURT: OKAY. SO THE OTHER THING I WANT IS  
12 TO KNOW WHO'S GOING TO MONITOR THAT COUNT, INFORMAL  
13 COUNT.

14 MR. DVEIRIN: JUDGE LATIN.

15 THE COURT: OKAY, I JUST WANT TO MAKE SURE THAT  
16 YOU'RE GOING TO HAVE SOMEBODY MONITORING IT.

17 MR. DVEIRIN: YEAH.

18 THE COURT: IT SHOULDN'T TAKE MORE THAN A HALF  
19 DAY OF HIS TIME, RIGHT.

20 MR. DVEIRIN: I DON'T KNOW. I DON'T KNOW. I  
21 WILL FIND OUT. I CAN PROBABLY GET IT DONE IN TWO WEEKS  
22 EASY, JUST MOSS ADAMS IS WHO I --

23 THE COURT: I'M JUST WONDERING, MAYBE YOU CAN  
24 GET SOMEBODY CHEAPER FOR THAT BECAUSE --

25 MR. DVEIRIN: THEY'RE USED TO IT. THEY ARE THE  
26 ONES THAT COUNT THE VOTES TO SEE IF WE REACHED THE  
27 QUORUM. AND WE'VE ALREADY PUT THEM ON NOTICE THAT WE  
28 MAY HAVE TO DO AN -- THEY TOLD THAT WE MAY HAVE TO DO AN

1 INFORMAL COUNTING. SO THEY'RE PREPARED. I JUST DON'T  
2 KNOW HOW LONG AND HOW MUCH THE COST. WE'RE WILLING TO  
3 PAY THE COST. I'LL GET AN ESTIMATE. ONCE I GET THAT  
4 DONE, WE'LL DO ANOTHER QUICK FAX ONLY JOINT REPORT. AND  
5 YOU'LL GET THE VOTE COUNT.

6 THE COURT: SO WHEN ARE WE GOING TO PUT THIS  
7 OVER TO?

8 MR. DVEIRIN: HOW ABOUT -- 30 DAYS?

9 MR. LEWIS: LIKE THURSDAY, MARCH 15TH?

10 MR. DVEIRIN: I CAN'T DO THAT. I CAN DO THE --

11 MR. LEWIS: FRIDAY, MARCH 16TH.

12 MR. DVEIRIN: LET ME SEE. I HAVE A STATUS  
13 CONFERENCE. I COULD DO -- I COULD DO THURSDAY.

14 THE COURT: SO THE 15TH, THEN?

15 MR. DVEIRIN: YEAH. 15TH AT 9:30 A.M.

16 AND I'LL GIVE NOTICE. WE'LL TRY TO GET YOU  
17 SOMETHING SEVERAL DAYS BEFORE THAT. MAYBE EVEN QUICKER.

18 MR. LEWIS: WE'LL DO OUR BEST TO DO A JOINT  
19 REPORT, IF WE CAN.

20 THE COURT: YES.

21 MR. LEWIS: THAT WAY THE COURT HAS LESS TO  
22 READ.

23 THE COURT: 9:00, OKAY?

24 MR. DVEIRIN: YOUR HONOR, CAN WE DO 9:30?

25 MR. LEWIS: 9 O'CLOCK OR 9:30?

26 THE COURT: 9:30 IS GOOD. 9:30 IS GOOD.

27

28

(AT 9:59 A.M., PROCEEDINGS  
CONCLUDED.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 72 HON. RUTH ANN KWAN, JUDGE

RESIDENTS FOR OPEN BOARD	)	
ELECTIONS, ET AL.,	)	
	)	
PLAINTIFFS,	)	NO. BS169638
	)	
VS.	)	REPORTER'S
	)	CERTIFICATE
PALOS VERDE HOME,	)	
	)	
DEFENDANTS.	)	
_____	)	

I, SABA MC KINLEY, COURT REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER.

DATED THIS 1ST DAY OF MARCH, 2018.



\_\_\_\_\_  
SABA MC KINLEY, CSR NO. 9051  
COURT REPORTER PRO TEMPORE