

June 15th HRRMC Meeting: Legal Rationale for Non-removal of President

June 15th we held a meeting at the request of certain members mostly representing a group called the Garden Club to discuss and to hold a vote from the Board of Directors (BOD) (not mentioned on their petition) to remove Roy Thornton as the president of HRRMC. Testimony was given which initiated an investigation into the topics discussed at the meeting. The following is the Board's official determination and its rationale for not removing Roy Thornton as president.

Removal of a president is a very serious matter and must be taken so by all parties involved. Since only the BOD can remove a sitting president without a full vote of all members, totalling a majority with a 123 vote minimum to remove, we are being asked to find him guilty of charges being brought forward at the meeting by members mostly from the Garden Club. The meeting was attended by 29 members. Just as in any other case, the BOD, acting as jurists, must grant the defendant (in this case, Roy Thornton) the presumption of innocence. This is a civil matter and as such the standard for the rendering of a verdict or vote (in this case) is a preponderance of evidence either in favor of removal or not.

At the meeting no evidence was produced or introduced in the form of documents other than a screenshot on a cell phone of a letter from the HRRMC to a member (not the one showing the photo). In the absence of documented evidence we heard a lot of mostly second hand hearsay witness testimony that had no first hand or corroborating evidence to back up the statements. Mostly the members said they felt bullied or intimidated by Roy using the HRRMC as a weapon against them resulting in what they claim was a loss of confidence. Thus the need for removal.

In listening to the testimony it became clear to me that many members have a basic misunderstanding of what the HRRMC is, does, and the ownership thereof. I heard comments such as "we own that building and property (HRRMC occupied)." Or, "You work for us. You are our employees." Let me state clearly what the facts are: HRRMC is a non profit and as such has no owners. Members do not have an ownership share in the corporation. This is the very definition of a nonprofit. When you purchase a lot in Ranchos subdivision you purchase two deeds. The Parcel First refers to your three acre lot. You own it fee simple and HRRMC has no jurisdiction over that whatsoever. However it is tied to a legal and financial responsibility which is part of the Parcel Second deed you received along with it. The Parcel Second property is a divided ownership of 1/1229th of the road lot in the subdivision. It is the paved road system and accompanying easement which are a right of way in common to provide you with access to your three acre property.

In that Parcel Second deed you grant irrevocable power of attorney to the BOD in charge of the escrow funds for maintenance of the road lot or HRMMC. Moreover you also grant legal authority to the HRRMC to impose assessments to pay for the cost to maintain the road lot.

The ownership of this divided interest road lot is what makes you a member of the corporation. As a corporation member you have no ownership rights in the corporation, as it does not issue stocks or bonds or shares, but you do gain the right to vote on issues presented to you by the BOD (those you have granted power of attorney to) and to petition the BOD if you think they are not addressing your concerns. The only caveat to the right to vote or petition, is that you must be current on your assessment dues. Although the corporation does not have owners that does not preclude it from owning property itself. HRRMC owns a three acre lot, buildings and equipment which are under direct control of the current BOD. Members do not own this 3 acre lot and its buildings any more than they would own that of their neighbors' properties.

Since I mentioned the right to petition I would like to use that to segue into the first accusation of abuse by Roy against one of the members. Paul Scott said that he had heard of a member that had been assessed a \$500 legal fee for merely signing a petition. He didn't know or wouldn't say the member's name and didn't have a copy of the petition or the letter of assessment. This, obviously, is hearsay evidence but it prompted another member to hold up a screen shot of his cell phone of a letter from HRRMC to the individual in question. The right to petition is very important and if a member was being fined by merely signing one that would be a very serious abuse of power. If it were true, it definitely could be used as a reason to remove an officer from the BOD, but, after a more thorough investigation, this proved to be false.

The member in question (member x) was assessed a \$500 legal fee (which was later rescinded) for filing a formal notice of criminal accusation against 12 former and sitting HRRMC Board members and their attorneys. The criminal accusation included racketeering, embezzlement, and tax evasion among other items. (see attached addendum). Accusations of this nature must be taken seriously by HRRMC and were rightfully referred to our lawyers for advice on how to proceed. The legal fees for such a criminal accusation should not be borne by the membership as a whole but rather the individual responsible for prompting it. This is part of the BOD fiduciary responsibility to its members. Not an abuse of power. In fact, the BOD approved a resolution to pass the costs on from vexatious litigants, so that monies for road maintenance wouldn't have to be spent on such legal issues.

Ironically in this case, member x was accusing Paul Scott of participating as a co-conspirator in a criminal racketeering scheme for personal profit, using the HRRMC as a shell corporation to defraud its members. It also put third party members on notice not to pay their assessments to such a criminal organization. A civil case was never brought by member x which is part of the rationale for the corporation to refund the \$500 fee. No civil case for defamation was brought by the HRRMC although it did meet the four criteria for doing so. According to Forbes Advisor, these are the four criteria for a defamation case:

- Someone made a false statement of fact-in this case the false accusation--to a third party.
- The statements weren't privileged. Some types of speech are given extra protection so they cannot be grounds for a defamation case. For example, if someone testified under oath that you committed a crime, this is a privileged statement because statements made in court proceedings are privileged.
- The person making the statement was negligent in determining if it was true or not if you are a private figure. If you're a public figure, then the person falsely accusing you of a crime must have acted with absolute malice, which means they knew the accusations were false or were reckless in assessing whether or not the accusations were true
- You were harmed as a result of the false statements.

HRRMC spends a lot of money on legal help for such suits brought against it by vexatious litigants, I believe (my opinion), because there are no consequences for bringing such suits. This goes back many years, long before the current BOD, and I believe it will continue until a future BOD decides to impose penalties for those who do so.

The next topic seemed to be a recurring theme in the meeting...that of voter fraud committed by Roy.

The history of HRRMC members accusing its leadership of manipulating or misrepresenting ballots cast in elections goes back many years. So much so that a few years ago, acting president Phyllis May, much to her credit, decided to have all ballots sent to a third neutral party to verify and tally all ballots. You would think that would have stopped suspicion but apparently not. At the meeting and at a previous meeting, Abby Somers came forward with testimony that she spoke with the third party vote counter, Nadine Ebert, and that Nadine told her that Roy had changed her count. This is, of course, hearsay testimony and would never be allowed in a court proceeding. If Ms. Somers had wished her story to be taken seriously; she could have acquired an affidavit from Nadine stating first hand that that had happened. No such corroborating evidence was produced by Ms. Somers even though she had several months to obtain

such documentation. We do however have a first hand text from Nadine stating the following:

“I spoke to someone at the Market many months ago. In my recollection we talked about the votes and I said I really didn't remember any numbers but I had a copy of the tally. Then I ended the conversation by saying that if they were unhappy with Roy they needed to vote him out but that I only count the votes. I'm not really involved with anything else.”

As you can see, Nadine's statement does not corroborate Ms. Somers' testimony at all. In fact, Nadine's words are very telling when she states if you're unhappy with Roy, vote him out. She didn't say that you should go to other BOD members or the police because of fraud. She doesn't ever use the word mistrust, just unhappy, implying it's more of a feeling than a legal matter. With no documentation or corroborating evidence of any kind presented with many months to prepare, this accusation cannot be adjudicated in Ms. Somers' favor.

Ms. Somers also testified to receiving only half of a ballot. She didn't state the year, but she implied it was a deliberate attempt to 'disenfranchise' her vote. (my word). She said she notified the HRRMC office and was told there was a printing error. What she failed to mention was whether or not she received a new ballot and was able to cast a vote. This is the most pertinent information, but yet she chose to leave it out of her statement.

Yes, there was a ballot printing error in the 2021 election. All the ballots, 1227, were printed and tri-folded for us to mail out making it an error that was not easily detectable. Four members reported receiving half printed ballots and all four were sent new ballots and subsequently voted. This accusation also strains credibility as some sort of conspiracy to stop certain members from voting; especially in light of the fact that no other members submitted affidavits or complaints that the half printed ballot they received prevented them from voting.

The next accusation I would like to address is the one made by Cheryl Vos, the acting secretary, stating she was forced by Roy and Marcy to change her minutes. This is first hand testimony and should be taken seriously. In her testimony, she didn't mention which minutes she was referring to. She also didn't elaborate on what she was being asked to change or why. She also did not testify to telling her concerns to fellow BOD members or anyone that might have been able to investigate further. The only response we are aware of is that she resigned her position with no mention of intimidation. Ms. Vos also failed to produce the minutes she had created before she was asked to change them.

Accusations are easy to make but remember when making them the burden of preponderance of evidence is on you, not the accused. In my opinion Ms. Vos failed to meet that evidence based standard. In my subsequent investigation, I did ask Roy and Marcy for a response which they provided. Keep in mind the only requirements for minutes at our meetings is to record who is in attendance, if a quorum is carried, and any motions that are made and whether or not they passed or failed. Roy and Marcy said they asked her to correct her minutes on two occasions of which they had documentation for both. They presented me with both her uncorrected minutes and the corrected minutes. In both cases the corrections were justified. On one, she said a motion had failed with 4 in favor and 3 against. Now obviously that error is self-evident. The other was a road name correction.

The next topic I will address is the closing of the business office. The office was closed and open by appointment only in mid March. Some members made the accusation that it was done as a deliberate attempt to prevent them from paying their assessments to disqualify them from signing the petition. This again is not a credible accusation for the following reason alone. The record date for a petition is 30 days before the petition is filed with the secretary. The petition was filed March 27 meaning to be eligible all signatories would have had to have paid on or before February 25th. The office was closed for other reasons, some of which as a direct result of members coming in making demands of office help and being rude and vocally abusive. As I mentioned earlier, the HRRMC Property is not owned by members and is not required by any bylaw or state statute to be open to the public. All members have many options to pay their assessments available to them, and they are due on January 1.

Summation:

We, as the BOD, called the meeting on June 15th, despite the petition calling for it failing, so we could hear testimony, gather evidence and receive data concerning the request for a removal of a sitting, duly elected BOD president. The meeting notice was given months in advance so that all sides would have time to prepare. What we got at the meeting was a lot of hearsay testimony, and when we did get direct testimony it was not backed up by any substantiated documents, affidavits, or records of any kind. We were given a very misinformed story of how a member was being intimidated through the use of a legal fee to silence their right to petition.

We were then told, because of the evidence presented, that we were supposed to deliver, on the spot, a guilty verdict to remove Roy from the presidency. The current BOD is made up of fair minded, deliberative individuals that have a very good sense of how our justice system works: presumption of innocence, hearing all the facts and being

presented with all of the evidence before rendering a decision. At the end of this meeting, we had very few facts, no documented evidence and mostly hearsay testimony from the accusers, and we hadn't had the ability yet to hear the defendant's side of the story. When we refused to render a removal based on this meeting alone, I heard comments from members such as "cowards", "what a waste of time" and so on. As to the waste of time, the members that called for the meeting and did an inadequate job of presenting fact based evidence and testimony: wasted their opportunity and time. As for the cowards comment, if standing up to a very angry group that is calling for the removal of an officer on flimsy evidence is cowardice, then maybe you better check your dictionary. You complained about bullying from Roy the whole meeting and then proceeded to engage in it yourself. This BOD is made up of very honest people with a huge amount of integrity. They will not be intimidated into making rash and incomplete evidence based decisions. I am proud of their steadfastness and adherence to strict legal principles and so should you all, even if you disagree with them. Our verdict for non-removal stands.

Sincerely,

Curtis Holyk

Curtis Holyk
Vice President HRRMC

Addendum attached

Notice by Ranchos property owners of non-consent non-obligation to Racketeering Influenced Criminal Organization "HRRMC" for fraud breach of trust embezzlement and extortion, dirty tactics, slander, defamation, bullying, intimidation, stalking, terrorism, elder abuse.

Notice to agent is notice to principle, notice to principle is notice to agent,
private administrative process

Regarding DEFENDANT Debtor(s):

1. Racketeering Influenced Criminal Organization alleged non-profit "HRRMC" (HAWAIIAN RANCHOS ROAD MAINTENANCE CORPORATION);

2. "ROY THORNTON", President;

3. "MATS FOGELVIK", Treasurer;

4. "CHRIS PINNOW", VP;

5. "CURT HOLYK";

6. "PETER BOSTED";

7. "PHILLIS MAY", Secretary;

8. "GABE HECHLER", Office of Director;

9. "ROLAND PACKY TAYLOR";

10. "MIKE GERBO", Office of Director;

11. "PAUL SCOTT", Office of Director;

12. "TOM TYLER";

13. "CHERYL VOS";

impersonating volunteers as servants for private property owners at Hawaiian Ocean View Ranchos, 92-1347 Kohala Blvd., Ocean View, Hawaii, near 96737- (mail- P.O. Box 7007, Ocean View, Hawaii, 96737),

14. Racketeering Influenced Criminal Organization "JUNG & VASSAR, P.C.", "Jung & Vassar, P.C.", Attorneys at Law, A Law Corporation, Kuakini Tower Suite 100, Kailua Kona, Hawaii, 96740;

15. "FRANCIS L. JUNG", "Francis L. Jung" Esquire, JD #005489, Kuakini Tower Suite 100, Kailua Kona, Hawaii, 96740;

16. "THOMAS WAYNE VASSAR", "Thomas Wayne Vassar" Esquire, JD #005493, 7 Rideout Court, Gaithersburg, Maryland, 20877

17. "CAROL MONAHAN JUNG", "Carol Monahan Jung" Esquire, JD #008228, Kuakini Tower Suite 100, Kailua Kona, Hawaii, 96740;

18. "DAVID HARRISON LAWTON", "David Harrison Lawton" Esquire, JD #007338, Kuakini Tower Suite 100, Kailua Kona, Hawaii, 96740;

19. "Mutual Underwriters", 74-5565 Luhia Street, Ste. #C/A4a, Kailua Kona, Hawaii, 96740;

For heinous breach of trust, thefts, extortion's, embezzlement's, unjust enrichment's, tax fraud on unreported income, misappropriation of trust moneys, abuse of authority, breach and disregard of by-laws, breach and disregard of Roberts rules, forging ahead without informed consent of property owners, personal use and misuse of the land owners equipment and materials, lockout of landowners property and HRRMC structure, stalking and photography, slander and defamation, arbitrarily disabling gate keys without notice then forcing land owners to pay \$25 for a DKS gate key that costs \$4.55, extorting hundreds of dollars (\$700+) in fees and penalties for being two years late on road fees, making false police reports against land owners, propaganda against land owners, "HRRMC" trustees stealing huge amounts of beneficiaries dollars to pay unethical attorneys to sue beneficiaries, absolute failure to maintain the roads:

therefore no land owner at Hawaiian Ranchos Estates has any monetary obligation to Racketeering Influenced Criminal Organization alleged non-profit HRRMC Roy Thornton, Mats Fogelvik, Mike Gerbo, and other board members.

All moneys paid to Racketeering Influenced Criminal Organization alleged non-profit HRRMC must be returned immediately, non-negotiable.

Name: Anthony Page, Autograph: Anthony Page

Date: 2-2-22, 2022 A.D., Address: 92-1306 Apt: B16d

Copy #1 For: Racketeering Influenced Criminal Organization alleged non-profit HRRMC Roy Thornton, Mats Fogelvik, Mike Gerbo, and other board members.