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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT
DISTRICT, a/k/a IVGID, a governmental subdivi-
sion of the State of Nevada; et al.,

Defendants.

Case No. 3:08-cv-00166-ECR-RAM

**Plaintiff's Requests for Admissions
to Defendant Chuck Weinberger
(First Set)**

Exhibits (3)

and

Certificate of Service

TO defendant CHUCK WEINBERGER and his attorneys of record:

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiff STEVEN E. KROLL requests that defendant CHUCK WEINBERGER admit within thirty days after service hereof, for the purposes of this action only, the truth of the facts, application of law to fact, or opinions about either as set forth hereafter.

Defendant WEINBERGER's Responses to these Requests for Admissions shall specifically admit or deny each separately stated matter, or set forth in detail the reasons why he cannot truthfully admit or deny the matter. **A denial shall fairly meet the substance of the requested Admission**, and when good faith requires that defendant WEINBERGER qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. **Defendant WEINBERGER may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has**

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made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. If in responding to these Requests for Admission defendant WEINBERGER considers that a matter of which an admission has been requested presents a genuine issue for trial, he may not on that ground alone object to the Request.

Defendant WEINBERGER is further advised that each matter hereinafter set forth will be deemed admitted by him unless, within 30 days after being served therewith he serves upon Plaintiff his written answer or objection addressed to the matter and signed by him or his attorney. Further, if said Defendant denies any matter herein sought to be admitted and Plaintiff later proves a document to be genuine or the matter true, Plaintiff may move that the party who failed to admit pay his reasonable expenses, including attorney's fees, incurred in making that proof. Finally, defendant WEINBERGER is advised that Rule 37(a)(4) of the Federal Rules of Civil Procedure provides that **an evasive or incomplete response to any of the following Requests will be treated as a failure to respond** for purposes of compelling discovery and/or seeking sanctions in court.

DEFENDANT CHUCK WEINBERGER IS REQUESTED TO ADMIT THAT EACH OF THE FOLLOWING STATEMENTS IS TRUE:

1. IVGID Ordinance 7 Section 62 creates two classes of IVGID residents, one class which is granted entry onto and use of the IVGID-owned Beach Properties¹ for recreational purposes, and the other class which is denied entry onto and use of the IVGID-owned Beach Properties for recreational purposes.

2. Except for the Incline Village General Improvement District in which you sit as a Trustee, you are personally aware of no other city or other municipal government in any state of the United States today which prohibits certain residents of that municipality as a class from entering or using their government-owned recreational facilities for recreational purposes, while allowing certain other residents as a class to enter and use those same facilities for recreational purposes.

3. While in Law School, you took a course in Constitutional Law.

4. You are aware by virtue of your schooling and life experiences of the segregationist history of the American South, and of the practice by some municipal governments during those times of transferring their publicly-owned recreational facilities to private ownership so that the exclusion of people of color from those recreational facilities could continue to be enforced.

5. You are the originator of the term "public with restricted access" to de-

¹ The "Beach Properties" refer to Incline Beach, Ski Beach, Burnt Cedar Beach, and Hermit Beach.

scribe the status of the IVGID Beach Properties.

6. "Public with restricted access" is another way of saying "private".

7. The photograph attached hereto as Plaintiff's Exhibit 4 for identification is genuine, and among other details shows a sign saying "Private Beach" affixed to the entry kiosk of what you personally recognize as one of IVGID's Beach Properties.

8. The 1954 Deed for a piece of real property in Crystal Bay, Nevada attached hereto and marked Plaintiff's Exhibit 152 for identification is genuine.

9. The 1954 Deed attached hereto as Plaintiff's Exhibit 152 for identification contains a Restrictive Covenant prohibiting the Crystal Bay premises being transferred from ever, at any time, being sold, conveyed, leased, or rented to any person other than of the Caucasian Race.

10. You would never under any circumstances, whether in the capacity of an individual homeowner or as an elected government official, support the enforcement of the Restrictive Covenant contained in the 1954 Deed attached hereto as Plaintiff's Exhibit 152 for identification.

11. The excerpt from the Minutes of the Board of Trustees on July 9, 2008 attached hereto as Plaintiff's Exhibit 169 for identification is genuine.

12. At the Meeting of the IVGID Board of Trustees on July 9, 2008 you said in words or substance that there is not nor will there ever be any backroom deals by IVGID Trustees.

13. By "backroom deals" in your July 9, 2008 public comments, you meant secret meetings and agreements among Trustees of IVGID made outside the public eye without advance public notice and input.

14. On or about April 23, 2008 you met with other IVGID Trustees without notice to the public and outside the public eye and discussed what was later to become Policy 136².

15. At the Board meeting of April 30, 2008 at which the adoption of Policy 136 was on the Agenda, you voted for the formal adoption of Policy 136 without disclosing that you had previously met in secret with other Trustees to discuss this matter.

16. At the Meeting of the IVGID Board of Trustees on July 9, 2008 which you attended, Trustee Bob Wolf said in words or substance that the purpose of IVGID's defense of the Beach Access litigation now in Federal Court "is to protect property rights," and you agreed then and agree now with that statement of

² IVGID Policy and Procedure Number 136 – Policy Concerning Access to District Property and the Use of District Facilities for Expression effective May 1, 2008.

IVGID's purpose.

17. The property right which you and the District are defending in the above-captioned lawsuit is the perceived right of exclusive access to and use of IVGID's Beach Properties granted to property owners in Incline Village by virtue of the Restrictive Covenant in the 1968 Deed.

18. Defending the property right of those residents of the District who claim exclusive access to the District's Beach Properties requires that you reject the claim by those residents of the District who are excluded from the Beach Properties and who assert their own rights therein and thereto.

19. You, CHUCK WEINBERGER, are a 1968 Deed Holder in Incline Village and enjoy access to and full use of the tax-exempt IVGID Beach Properties.

20. Plaintiff STEVEN E. KROLL herein is a bona fide resident of IVGID but does not enjoy access to and full use of the tax-exempt IVGID Beach Properties for recreational purposes as you do.

21. The benefit accruing to you personally by voting to maintain exclusive access to IVGID's Beach Properties for 1968 Deed Holders in Incline Village is greater than that accruing to other IVGID property owners in Crystal Bay who are excluded from IVGID's Beach Properties because they are not 1968 Deed Holders.

22. Because any vote by you as a Trustee on matters involving Beach Access personally benefits you to the detriment of those of your constituents who are denied Beach Access by IVGID law, you are prohibited from voting on such matters by Nevada Revised Statute Section 281.501.

23. NRS 281.421 requires that you must commit yourself to avoid conflicts between your private interests and those of the general public whom you serve as a Trustee.

24. When you were sworn in as a Trustee of the Incline Village General Improvement District, you took the following oath in words or substance: "I do solemnly swear that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of Trustee, Incline Village General Improvement District."

25. In your personal opinion, your obligation to the Constitution of the United States and the Constitution of the State of Nevada to guarantee the equal protection of the law to all residents and taxpayers within the governmental body known as the Incline Village General Improvement District trumps any obligation you may have to protect the Restrictive Covenant of the 1968 Deed.

26. You are the individual who originated the idea of creating Free Speech zones at the IVGID Beach Properties which ultimately became Policy 136.

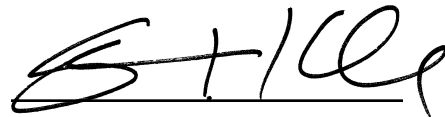
27. Policy 136 allows persons who are not 1968 Deed Holders or guests of 1968 Deed Holders to enter the Beach Properties for purposes of expressing their First Amendment rights.

28. You recognize that by allowing persons who are not 1968 Deed Holders or their guests to gain access to and use of the Beach Properties, Section 62 of Ordinance 7 and the Restrictive Covenant of the 1968 Deed upon which it is based are violated.

29. At the Board of Trustees Meeting of July 9, 2008, referring to another IVGID-owned piece of deed-restricted real property you stated in words or substance that "the Board won't be changing the deed restriction because the only body that has the authority to do that is the court."

30. By adopting Policy 136 on April 30, 2008, the IVGID Board effectively changed the deed restriction without applying to a court.

DATED: at Crystal Bay, Nevada this 5th day of August 2008.



Steven E. Kroll, Esq.
Attorney for Plaintiff

Exhibits

(Exhibits are numbered according to Plaintiff's indexing system, and not sequentially. The first Exhibit which follows is numbered Exhibit 4)

Exhibit 4

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Exhibit B

Exhibit 152

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388

DEED

241612

1
2
3 THIS INDENTURE, made the 15th day of September, 1954,
4 between CRYSTAL BAY CORPORATION, a Nevada corporation, the party
5 of the first part, and ED MALLEY, a single man, the party of
6 the second part,

W I T N E S S E T H :

7
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13 That the said party of the first part, in consideration
14 of the sum of Ten Dollars (\$10.00) lawful money of the United
15 States of America to it in hand paid by the said party of the
16 second part, the receipt whereof is hereby acknowledged, does by
17 these presents grant, bargain and sell unto the said party of the
18 second part, and to his heirs and assigns forever, all those
19 certain lots, pieces or parcels of land situate in the County of
20 Washoe, State of Nevada, and bounded and described as follows,
21 to-wit:

22 All of Lots 1, I, 2, II, 3 and III in
23 Section 19, Township 16 North, Range 18
24 East, M.D.B. & M., EXCEPT such portions
25 as have been heretofore conveyed.

26 Said lands are generally referred to as
27 "Crystal Bay Park Subdivision," according
28 to an unofficial map, and "Crystal Bay Park
29 Unit No. 2 comprising Lots 1 to 10 inclusive,
30 of Block 6, and being a portion of Lot I of
31 Section 19, T. 16 N., R. 18 E., M.D.B. & M.,
32 Washoe County, Nevada", according to the
33 map thereof, filed in the office of the
34 County Recorder of Washoe County, State of
35 Nevada, on August 20, 1948, together with
36 unlotted portions. Also including here-
37 with all roads, trails, walkways now standing
38 of record in the name of the grantor herein.

39 SUBJECT TO existing highways, telephone,
40 telegraph and transmission lines and ease-
41 ments granted to the Crown-Willamette Paper
42 Company, or rights of way of record.

43 SUBJECT, however, to the following reservations and restrictions.

1 1. No part of said premises ever, at any time,
2 shall be used for the purpose of buying or selling
3 intoxicating liquors, or for maintaining any nuisance.

4 2. No part of said premises ever, at any time,
5 shall be sold, conveyed, leased, or rented to any
6 person other than of the Caucasian Race.

7 3. All said property is restricted to be used
8 for private residential purposes only.

9 4. All said property is subject to a building
10 restriction of Fifteen Hundred Dollars (\$1500.00)
11 for any dwelling house built thereon.

12 5. No shacks or unsightly structures of any
13 kind, nature, or description whatsoever shall be
14 constructed or placed upon said premises.

15 6. Dwellings erected upon said lot shall have
16 installed sanitary, inside plumbing which shall be
17 connected to a cess pool or a septic tank in
18 accordance with law.

19 7. Any dwelling or other building upon said
20 property shall be at least fifteen (15) feet from
21 the front property line and at least three (3)
22 feet from each side line.

23 8. No bill boards or advertising signs of
24 any kind whatsoever shall be erected, placed or
25 permitted upon said property.

26 9. The said property is subject to all ease-
27 ments which now duly are of record.

28 TOGETHER WITH the tenements, hereditaments, and appur-
29 tenances thereunto belonging or appertaining, and the reversion
30 and reversions, remainder and remainders, rents, issues and
profits thereof, and together with all water rights, facilities
and systems owned by first party.

TO HAVE AND TO HOLD the said premises, together with the
appurtenances, unto the said party of the second part, and to
his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has
hereunto set its hand the day and year first above written.

CRYSTAL BAY CORPORATION,

(Corporate Seal)

By [Signature] President
By [Signature] Secretary

330

1 STATE OF NEVADA }
2 COUNTY OF WASHOE } ss.

3 On this 15th day of September, 1954, personally
4 appeared before me, James J. Green, a Notary
5 Public in and for said County of Washoe, JOHN V. MUELLER, known
6 to me to be the President of Crystal Bay Corporation, the corpora-
7 tion that executed the foregoing instrument, and upon oath, did
8 depose that he is the officer of said corporation as above design-
9 ated; that he is acquainted with the seal of said corporation
10 and that the seal affixed to said instrument is the corporate
11 seal of said corporation; that the signatures to said instrument
12 were made by said officers of said corporation as indicated after
13 said signatures; and that the said corporation executed the said
14 instrument freely and voluntarily and for the uses and purposes
15 therein mentioned.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 affixed my Official Seal at my office in the County of Washoe,
18 the day and year in this certificate first above written.

19
20
21 James J. Green
22 Notary Public in and for the
23 County of Washoe, State of Nevada.

24 My Commission Expires: 2/28/55

25 DOCUMENT No. 241612
26 Filed for record at the request of Ed Malley
27 APR 5-1955 a. 30 Minutes past 1 o'clock P.M.
28 Recorded in Book 376 of DEEDS
29 Page 388 Records of Washoe County, Nevada.
30 Fee: \$ 3.05
By W.D. McLeod Deputy

Exhibit 169

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- J.7. Snowmaking Master Plan – Compressor Purchase - 2008/2009 Capital Improvement Project: Fund: Community Service; Program: Ski; Data Sheet #10**
- J.8. Brooke • Shaw • Zumpft – Legal Services Contract Renewal**
- J.9. Approval of the Fiscal Year 2008/2009 Pay-For-Performance Matrix (*moved to General Business Item K.6.*)**

Trustee Weinberger made a motion to approve the Consent Calendar as amended. Trustee Wolf seconded the motion. Chairwoman Epstein called the question and the motion was passed unanimously.

K. GENERAL BUSINESS

K.1. Proposed Settlement Agreement concerning the property of Mr. Andrew Machata, owner of 789 Geraldine Drive, APN 125-251-05

District General Counsel Brooke gave an overview of the submitted materials.

Trustee Wolf made a motion to accept the settlement agreement as presented; Trustee Weinberger seconded the motion.

Trustee Brockman said that materials, related to this matter, were received late thus the Board has had zero chance to review. It is his proposal that the Board take public comment, give the Board time to read the submitted materials, and take action at a later date. Trustee Weinberger requested that a memorandum be prepared, by District General Counsel Brooke, explaining easement by necessity. Trustee Bohn said that he agreed with Trustee Brockman's comments.

Chairwoman Epstein asked Mr. Machata's representatives for their comments.

David McElhinney, counsel for Mr. Machata, said that there are experts here to respond to questions – Paul Kaletta, land use planner; Gary Davis, civil and structural expert; and Ed Humphrey, litigation attorney. Mr.

McElhinney continued that litigation is expensive and time consuming therefore what they would like to see is an amicable resolution.

Chairwoman Epstein opened the matter for public comment.

Tom Bruno said he has two points to make – (1) this situation is analogous to a person who killed both their parents and then asks the court for mercy because he is an orphan. Mr. Machata knew the land conditions when he purchased these parcels. He sold one, at a profit, and now he wants to change the rules of the game. As a realtor, when a property is shown, the realtor indicates that this is IVGID recreation property and nothing is going to happen on this property; no development will occur. When Mr. Machata owned both the parcels, he couldn't transgress the larger portion because it was not correct; and (2) if this Board is going to shift the parcel as he has heard, it is his opinion that it takes a vote of 60% of the people to make this change.

Chuck Otto stated that he has no suggestions as to how to get out of this mess. As Mr. Bruno stated, Mr. Machata owned all the property, chose to sell some, landlocked himself and now sues Dr. Kraft. There is nothing that says Dr. Kraft should be involved in the process. Mr. Otto continued that he isn't sure that all the avenues for access have been explored with TRPA [Tahoe Regional Planning Agency] and it is clear that Mr. Machata wants the view. Further, Mr. Machata is doing what he has done before and that is having a private citizen spend thousands of dollars in litigation; he is sickened by Mr. Machata and his representatives as this is flat out wrong.

Barbara Brosnan read the following prepared written statement:

"My name is Barbara Brosnan. My husband and I live at 772 Randall Avenue. We, along with our neighbors, have been voicing our objection to cutting a road across deed restricted Parcel A for about six years. Now, we and our neighbors are in the redoubt trying to hold off another assault on this pristine greenbelt. We have read the terms of the proposed settlement agreement and conclude that the terms are totally in favor of Mr. Machata. We are disappointed and concerned that this Board would be required to even consider accepting these terms. We are also shocked to learn that the very person who has sued IVGID to use this deed restricted property is willing to pick up the tab if the residents of Incline, who are the

Hearing no further public comments, Chairwoman Epstein brought the matter back to the Board.

Trustee Bohn asked Andy Wolf about the turn of the events with the Kraft's – was it a change of heart or due to the financial situation or something else. Mr. Wolf said that compensation comes at the end and through the highest court. Mr. Machata can delay this for a long period of time. There may be some ground for recovery of fees and there was recognition that, in the middle of this matter, it could go on for more than three years. The defense has fallen solely on the Kraft's, IVGID has not taken a position, the Kraft's are going it alone and IVGID is sitting back and watching the bloodfest. All of those that have objected know that the legal expense has fallen on the Kraft's and we don't see anything that is going to change this situation over the next three years therefore we support this proposed settlement on that basis. Trustee Bohn followed up by asking if this has gone on longer than they thought and did they expect others to jump in. Mr. Wolf responded that it has gotten more expensive and IVGID hasn't staked out its turf.

Trustee Wolf said that one thing that needs to be clear is that this has already gone to court once. District General Counsel Brooke said it is active litigation, Mr. Machata filed a complaint against Dr. and Mrs. Kraft and the District, has been pending almost two years, there have been various procedural matters with motions on either side and most are pending however the court ordered a settlement conference. The District attended this conference where it was made clear that the representatives attending did not have the authority to agree or not agree and that it had to be brought back at a public meeting. If this proposed settlement is not successful, it will go back to court where there will probably be an appeal. This District is a party to this matter and will remain a party until it is settled. Trustee Wolf followed up by asking if the litigation costs will continue. District General Counsel Brooke responded yes. Trustee Wolf concluded that this strikes him as being a little odd because the beach litigation is to protect property rights and this one doesn't protect them.

Trustee Weinberger said, regarding the comment about backroom deals, that he guarantees everyone that the last time any three of the Board members have talked about this was last year; other than to individually ask District General Counsel Brooke questions. There is no nor will there be any backroom deal as it just can't be that way. Question to District General Counsel Brooke – in the transcript it is stated that the deed

restriction would continue except on the driveway and to allow for construction of the driveway; how can this Board allow construction of the driveway on property that only allows recreation. District General Counsel Brooke responded that the settlement contemplates an exchange of property and that the deed restriction would remain on the property however it would be modified for the small portion of the driveway. Trustee Weinberger followed up by asking who is allowing the construction; District General Counsel Brooke said it is a court order in favor of Mr. Machata.

Trustee Brockman said he would like to reinforce that a backroom decision is not going happen period. Regarding the exchange of property, he would like specifics such as where and how much it is worth. Also, he would like to know how a driveway can be built there without changing the access to the recreational area. Furthermore, would it be acceptable to all parties to have a trail sign built so it would recognize a trail head for the IVGID property. Lastly, he would like to see an aerial map with current locations of the homes in the area and a better understanding of the IVGID parcel and what surrounds it.

Chairwoman Epstein said a year ago, this Board listened to about the same testimony. Mr. Machata failed to demonstrate the need for access as changes could be made by Mr. Machata. This Board can not tamper with a deed restricted property because we don't have the authority to do so. The property exchange is immaterial. You can't make the property a little bit pregnant; it is deed restricted property and that is the way it is going to stay. This Board and those before it, have always maintained that they can't change deed restrictions. Further, it is contrary to everything this Board stands for, we said that a year ago, and we are saying it now thus seeing more information isn't going to change the deed restriction.

Trustee Weinberger made a motion to table this matter because the Board doesn't know what is at stake and requires essential information because of the risk factor. Trustee Wolf seconded the motion to table.

Chairwoman Epstein said it is not in this Board's jurisdiction to change a deed restriction and this is consistent with past Boards. There is other litigation in place thus how is additional information going to change this matter; there is no difference in her opinion.

Trustee Bohn said he speaks against Trustee Weinberger's motion for basically the same argument and asked District General Counsel Brooke which motion should be voted upon first; District General Counsel Brooke said that the motion to table should be voted upon first.

Trustee Wolf, speaking for the motion to table, said that the Board has to know the rules they are playing under and that the Board has the responsibility to find out all the potentials as right now the Board is on either side of the property rights issue.

Chairwoman Epstein said that the lawsuits are the same issue – do we or do we not have the authority to change a deed restriction.

Trustee Weinberger said that the Board won't be changing the deed restriction because the only body that has that authority is the court. If there is a 50/50 chance in court, he would be against this settlement however when you get into the 90's, he would be for the settlement. However, at this time, it is an unknown therefore this Board needs that information.

Trustee Bohn said that he has never seen a court or attorney give odds, this sounds like situational evidence therefore let's vote our conscience and asked Chairwoman Epstein to call the question.

Chairwoman Epstein called for the vote on the motion to table this matter; Trustees Weinberger and Wolf voted in favor of tabling; Trustees Bohn, Brockman and Epstein voted opposed. The matter was not tabled.

Chairwoman Epstein called for the vote to accept the proposed settlement; Trustee Wolf voted in favor; Trustees Bohn, Brockman, Weinberger and Epstein voted opposed.

Trustee Weinberger asked District General Counsel Brooke to prepare a memorandum on easement by necessity.

CERTIFICATE OF SERVICE BY MAIL and EMAIL

Pursuant to Rule 5(b) FRCP, I certify that I am the attorney for Plaintiff in the above entitled action, and that on this date I caused a true and correct copy of the “ **Plaintiff’s Requests for Admissions to Defendant CHUCK WEINBERGER (First Set)**” herein to be served upon the parties or attorneys by depositing the same with the U.S. Post Office from a point within the State of Nevada, first class postage pre-paid, and addressed to:

**Stephen C. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 South McCarran Blvd. Suite B
Reno, Nevada 89509**

and also electronically by eMail to said parties or attorneys addressed to:

**Stephen C. Balkenbush
rla@thorndal.com,
receptionist2@thorndal.com
sbalkenbush@thorndal.com
smb@thorndal.com**

DATED: at Crystal Bay, Nevada this 5th day of August, 2008.


STEVEN E. KROLL

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