

Cedar Mesa Ranches Homeowners Association, Inc.

cedarmesarancheshoa.org

10208 Road 35
Mancos, Co 81328

President • James W. Bignell
Phone: (970) 564-5964

FAX: 970-564-1099
Email: biggy01@aol.com

To: The Cedar Mesa Ranches Homeowner membership:

On August 29, 2006, the Board had written an informational letter regarding this court case. While we would have liked to send it out at that time, we had to wait for the official court transcript and statements from our attorneys before we could do so. Now that we have received all documents, we are able to forward this letter to the membership. We hope this helps you understand the process that took place.

If you have any concerns or questions, please contact Jim Bignell.

As you are aware, on August 21, 2006, a trial was set to begin between Mr. Torin Andrews and the CMR-HOA. A hearing with Judge Buss was held at 9:00 a.m. to rule on claims that were brought up by both parties. Based on the outcome of these rulings, it would be determined which, if any, claims would go to trial before a jury.

For those of you that are not aware of the circumstances of this lawsuit, we would like to present a little background. In 2004, a lawsuit was going on between the Board of Directors and Mr. Andrews over the paving of the cul-de-sac in front of his lot. The settlement agreement on October 14, 2004 allowed Mr. Andrews to pave only the piece of the cul-de-sac that is directly in front of his lot, to receive \$4,000 in compensation and he was given a mutual release, which reads in part:

“...each party and his, her or its successors, heirs and assigns, hereby remises, releases and forever discharges the other party, and his, her or its heirs, agents, members, etc...from any and all claims, whether known or unknown, foreseeable or unforeseeable, which either party has or may have as of the date of the agreement.....”

Based on this agreement, the CMR-HOA wrote off any dues that were owed up until the date of the agreement.

In January 2005, the Board of Directors assessed Mr. Andrews for his 2005 dues. A certified letter was sent stating a lien would be placed on his property if the dues were not paid. A lien was placed on Lot 107 on June 17, 2005 for \$175 and again on August 22 for the dues increase of \$275. In a letter dated April 2005 to James Bignell, President of CMR-HOA, Mr. Andrews stated that he was resigning his membership in the HOA and that he would no longer pay assessments. Mr. Andrews filed suit against the CMR-HOA in July 2005. He based his lawsuit on the settlement of 2004, which he states released him from assessments. This was contrary to the Board's and its legal counsel reading of the settlement. At this point, our insurance carrier was notified and they then proceeded to retain a law firm to handle our case.

In January 2006, we again sent out notices for the 2006 dues. Again, a certified letter was sent to Mr. Andrews stating a lien would be placed if the dues were not paid. When the dues for Lot 107 were not paid by the cutoff date, we placed another lien on the property on May 17, 2006.

During the winter, spring and summer of 2006, both sides, with no resolution, presented many letters and settlement offers and a trial was set for August 21, 2006 in Cortez, CO.

On August 21, 2006, at a hearing before Judge Buss, the CMR-HOA Board, our attorney Mike Williams, Torin Andrews and his attorneys were present. All claims presented by Mr. Andrews against the HOA were dismissed except for the issue of assessing Mr. Andrews for HOA dues. The Judge, however also ordered the CMR-HOA to remove the liens that are in place on Lot 107, which has been done on August 22, 2006. Also, the judge found that

Mr. Andrews was precluded from raising any issues as to who has the right to maintain the roads and whether Mr. Andrews has to be a member of the HOA or that we are not a CCIOA community. As to the Covenants, the court indicated that the CMR-HOA cannot take action to enforce any pre-existing issues. This does not preclude any other member or County Commissioners from enforcing the covenants in the future. The Abuse of Process claim by Mr. Andrews was dropped and we also dropped our Abuse of Process claim because we were restricted from using any pre-existing evidence.

To say the least, this earlier settlement has come back to haunt us. At the time, the 2004 Board agreed to this settlement, they were represented by counsel and upon his recommendation signed the document, which was mediated during a mediation session.

While the Board may not be happy with the outcome of this one issue, what is important is that we prevailed on all the other claims and can operate as an HOA and can continue to collect dues for the maintenance of the roads and the operation of the HOA. You can be proud of this Board as they fought to the end and did not give in. The Board members have stood up under extreme pressure and spent many hours trying to do what is in the best interest of the community. On this one issue, the Board feels it is not right that Mr. Andrews receives all the benefits and does not have to pay dues like all other HOA members.

Unfortunately, because of this litigation, the probability of our insurance premium going up is a possibility. The Board made the decision not to appeal the courts decision because the HOA would have to stand the cost of litigation. The Board felt the money would be better spent maintaining the roads. The Board has been so pleased by the support of Mr. John Snively of United States Liability Insurance Group in Wayne, PA. This insurance company gave us great latitude when most would not.

For your information, the following statement was sent to the Board from our attorneys to clarify the final decision:

“The case of Torin K. Andres versus Cedar Mesa Ranches Homeowners Association, Inc. was set for trial beginning on August 21, 2006. Based upon numerous pre-trial issues, a three-hour hearing was held the morning of August 21, 2006 at the Montezuma County courthouse in Cortez. This hearing was to determine some of the same issues that had been presented to the Judge in motions earlier in the case, specifically the effect of the prior settlement agreement between Mr. Andrews and CMR-HOA. At the end of the hearing the Judge determined the prior settlement agreement was not ambiguous and precluded Mr. Andrews from asserting the claims he asserted in this case against CMR-HOA. However, the Judge also found that since the prior settlement agreement was very broad in its language that CMR-HOA was also precluded from assessing Mr. Andrews’ dues. Since the only remaining issues that were to proceed to trial were each parties abuse of process claims, both parties decided to dismiss this only remaining claim. Finally after reviewing the transcript from the proceeding, it was also agreed that although the Judge’s ruling contained some inconsistencies and errors, neither party would appeal the ruling and both CMR-HOA and Mr. Andrews would work to address any future conflicts between them. A copy of the transcript is available for review.”

We had a great team of lawyers, Ms. Kim Allegretti and Mr. Mike Williams from the Denver law firm of Wood, Ris & Hames represent the HOA. We cannot thank them enough for their time, accessibility to the Board and their superb professionalism in handling this case.

Most of all, the Board would like to thank the membership for their unwavering support. This is a great community and we want to keep it that way.

Sincerely,

Cedar Mesa Ranches HOA Board of Directors