

**THIRTEENTH JUDICIAL DISTRICT
COUNTY OF SANDOVAL
STATE OF NEW MEXICO**

SUZANNE STAR, et al.,

Plaintiffs,

vs.

Case No.: D-1329-CV-2015-00072

**SIERRA LOS PINOS
PROPERTY OWNERS
ASSOCIATION,**

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER came before the Court for a trial on February 3, 2016 and July 12, 2016. The Plaintiffs Suzanne Star, Sabine Shurter and Barbara Van Ruyckevelt appeared, pro se. The Defendant appeared by and through its attorney, The Law Office of Brad Hays (Brad Hayes, Esq.). The Court, having examined Plaintiff's Findings of Fact and Conclusions of Law and Defendant's Proposed Findings of Fact and Conclusions of Law; having heard testimony and argument; having examined the pleadings and admitted exhibits; and being otherwise sufficiently advised in the premises, hereby submits its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiffs are residents of Sandoval County, New Mexico.
2. Each of the Plaintiffs is the owner of, or has an ownership interest in, a lot or lots within the Sierra Los Pinos Subdivision in Sandoval County, New Mexico.
3. Defendant Sierra Los Pinos Property Owners' Association is a New Mexico corporation which was established with the filing of Articles of Incorporation of

Sierra Los Pinos Property Owners Association in the Office of the New Mexico State Corporation Commission on June 25, 1973.

4. The Board of Directors of the Sierra Los Pinos Homeowners' Association is the duly elected governing body of the Association with powers and duties vested by the Bylaws and applicable New Mexico statutes.
5. No individual director has been named as a defendant in this lawsuit.
6. The Sierra Los Pinos Property Owners' Association adopted certain Bylaws.
7. The instant lawsuit does not involve an allegation that any party has violated any Restrictive Covenant or Declaration of Restrictions but, rather, involves allegations that the Sierra Los Pinos Homeowners' Association, acting through its Board of Directors, has breached its duties arising under the Bylaws and/or the Homeowner Association Act, Section 47-16-1 et seq., NMSA 1978 (as amended).
8. The Bylaws provide that every owner of a lot within Sierra Los Pinos Subdivision, Sandoval County, New Mexico, shall be considered a member of the Association. All membership is appurtenant to and may not be separated from ownership of a lot within the subdivision.
9. The Bylaws provide that the affairs of the Association are managed by a Board of nine (9) directors, all of whom must be members of the Association.
10. The Bylaws of the Association establish powers and duties of the Board.
11. The powers of the Board, set forth in Section 1 of Article VI, include a) the power to take actions as provided in the Bylaws regarding a member during any period such member shall be in default in the payment of any assessment levied by the Association and b) the power to interpret the restrictive covenants and the bylaws.

12. The duties of the Board, set forth in the Bylaws, include, but are not limited to, a) the duty to cause to be kept a complete record of all its acts and corporate affairs and present a statement thereof to the members at the annual meeting of the members and b) the duty to cause an audit of the Association's books.
13. The Bylaws set forth the authority of the Association to levy assessments on lots within the subdivision to promote the privacy, recreation, health, safety, welfare and environmental protection of its members and their properties.
14. The Bylaws provide that if assessments due from any lot owner become past due, the Association *may* invoke remedies as set forth in subsections (a) through (e) of Section 8 of Article X of the Bylaws. (emphasis added)
15. Any past due amount owed by a property owner automatically becomes a statutory lien on that property. See *NMSA 1978, Section 47-16-6(B)*
16. There is no allegation that the Plaintiffs have failed to pay their respective assessments in accordance with the Bylaws.
17. Pursuant to Article IX of the Bylaws, all Association information has been available to Association members on a reasonable basis. [See Kilburg Testimony]
18. Defendant provided Association financial information on a periodic basis via the Association's website, SLPPOA.ORG. [See Kilburg Testimony]
19. Defendant caused to be prepared and made available to the Association membership quarterly financial compilations by Sunland Management. [See Kilburg Testimony; Frank Casanova Testimony]
20. Defendant caused to be prepared an audit/review/compilation of financial activity of the Association by an outside accountant, McKinley & Associates, for the years

2012-2014. [See Defendant's Exhibits 9, 10 & 11]

21. The Treasurer prepared and made available at the meetings of the Board of Directors a monthly financial review. [See Kilburg Testimony]
22. Defendant has made available to Plaintiffs and other Association members all of the financial and other records required by the Bylaws and the Homeowner Association Act. [See Appended Bylaws of Sierra Los Pinos Property Owners' Association ("Bylaws")], Defendant's Exhibit 4 and Homeowner Association Act, Section 47-16-5(C); Kilburg Testimony]
23. Defendant has caused audit/review/compilation of the Association's financial activity to be prepared and distributed on a periodic basis which meets or exceeds the requirements of the Bylaws and the Homeowner Association Act. [Kilburg Testimony; Website; Defendant's Exhibits 9, 10 & 11; Kilburg Testimony]
24. The terms audit/review/compilation are interchangeable in referencing financial reporting required by the Bylaws or the Homeowners Association act. [See Homeowner Association Act, Section 47-16-10(A)]
25. All matters discussed by Defendant in executive session are reported to the general session and all votes on matters are conducted in the general session. [Kilburg, Bennett & Brophy Testimony]
26. The evidence has failed to show that the Defendant, acting through its Board of Directors, has breached its duty to the members of the Association, including Plaintiffs.
27. Plaintiffs have no damages.
28. Defendant incurred attorney's fees and costs in the defense of the instant case. [See

Kilburg Testimony]

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter.
2. Defendant may restrict the information provided to Association members to that information defined in the Homeowners Association Act as “financial and other records” or a reasonable policy based upon that definition. [See Homeowners Association Act, Section 47-16-5(E); Bylaws, Article VI, Sections c and e]
3. The words Audit/Review/Compilation are interchangeable when defining terms within the Bylaws. [See Homeowner Association Act, Section 47-16-10(A)]
4. Defendant may, in the best interests of the Association, withhold disclosure of personal adverse financial information on delinquent accounts. [See Homeowner Association Act, Section 47-16-5(C); Bylaws, General Powers of BOD, Article VI, Section 1, c and e]
5. Plaintiffs cannot replace the process of setting and changing policy of the Association by the Board of Directors and the Annual Meeting with requests for court intervention. See Bylaws, Procedure for Voting at Annual Meetings, Article II, Sections 2 & 5]
6. Plaintiffs’ claims are not supported by substantial evidence.
7. A court may award attorney fees and costs to any party that prevails in a civil action between a lot owner and the association or declarant based upon any provision of the declaration or bylaws; *provided that the declaration or bylaws allow at least one*

party to recover attorney fees or costs. (emphasis added) [See Homeowner Association Act, Section 47-16-14]

8. "Declaration" means an instrument, however denominated, including amendments or supplements to the instrument, that: (1) imposes on the association maintenance or operational responsibilities for common areas, easements or portions of rights of way; and (2) creates the authority in the association to impose on lots or on the owners or occupants of such lots, or on any other entity, any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots or the common areas. "Declaration" does not include a like instrument for a condominium or time-share project. [See Homeowner Association Act, Section 47-16-2 (I)]
9. The Bylaws of the Sierra Los Pinos Property Owners' Association constitute a Declaration as set forth in Subsection (I) of Section 47-16-2, NMSA 1978.
10. The Bylaws do not include a provision that allows at least one party to recovery attorneys' fees and costs under the circumstances of this case.
11. Defendant is not entitled to an award of attorney's fees and costs.


District Court Judge