



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

03-18-13

04:59 PM

Investigation on the Commission's Own Motion into the Operations and Practices of Live Oaks Springs Water Company (U-390-W), and its Owner/Operator, Nazar B. Najor; Notice of Opportunity for Hearing and Order to Show Cause Why the Commission Should Not Petition the San Diego County Superior Court for a Receiver to Assume Possession and Operation of the Live Oaks Water Company, pursuant to the California Public Utilities Code section 855. Other named Respondents Include City National Bank, Live Oak Holding, LLC a Nevada Limited Liability Company; Matthew Semmer, Receiver for City National Bank.

Investigation No. 12-08-004  
(Filed August 2, 2012)

**RESPONDENTS' OBJECTION TO STIPULATIONS OF CITY  
NATIONAL BANK AND THE DIVISION OF WATER AND AUDITS  
REGARDING CERTAIN ISSUES**

Respondents hereby object to the Stipulations of City National Bank and the Division of Water and Audits Regarding Certain Issues. The foreclosure action is in litigation in Superior Court and is not within the scope of or under the jurisdiction of the OII. Respondents' rights to a fair trial under the law would be unlawfully compromised if the DWA attempts to recommend certain decisions regarding the foreclosure without receiving and analyzing all pertinent evidence.

The OII, by its very nature is limited to the issues outlined in the Scoping Memo. Other matters are beyond the scope of the OII. The foreclosure case before Superior Court is a complex one, not to be decided lightly. Respondents do not have the assistance of counsel in the OII and are limited in time to prepare its objection and state all authorities under the law in response. The Respondents are not prepared to defend the foreclosure action in the limited period.

DWA has requested that the PUC, direct its attention to the Bank Loan, in the process of the OII, and find that the PUC not seek pursuant to its authority under Sections 825 or 851, to invalidate the Loan or encumbrance of utility property in this case, due to the “convoluted and complex history surrounding ownership of the public water utility.”

This forum should not make decisions or recommendations which would influence the foreclosure case in Superior Court. DWA has not received evidence or documents to support a valid ruling by the PUC, regarding the lawful execution of the loan by First Pacific Bank. There were no experts at the hearing on behalf of the bank. The current banker is not the original banker that made the loan. The testimony and moving papers were provided as second hand knowledge. When DWA requested information from the bank regarding the loan, they failed to refer to “the person most knowledgeable about the loan”. This person could have given first hand information about the loan. Respondents have evidence and just cause to believe that the loan documents on the Deed of Trust are invalid.

The foreclosure action in Superior Court is the proper jurisdiction to make a determination of the validity of the loan. Any interference by the DWA would be prejudicial to the case. Defendants in the foreclosure have a right to file their own motions or lawsuits against the bank, as the loan documents are disputed. DWA’s assertions are not based upon fact or evidence and are beyond the scope of the OII and the jurisdiction of the DWA.

Mr. Knapp has once again arrived at prejudicial conclusions without appropriately analyzing the facts and documents submitted into evidence.

Defendants in the foreclosure matter have filed their response, including a General Denial, along with fifteen affirmative defenses. Defendants have a right to have its case heard in the proper venue, without inappropriate rulings from an agency not accepting evidence in the matter. Defendants will prove at the foreclosure trial that the loan was under funded, included a sham guarantee, and had a flawed title. This is the motivating factor which has caused CNB to attempt to gather evidence which will prevent an objective trial in the appropriate venue.

The following is an excerpt from the Defendants’ answer in CNB Complaint:

*“Defendants Live Oak Holding, LLC dba Live Oak Enterprises, LLC, Live Oak Management Corporation and Daniel B. Najor (hereinafter “Defendant”) hereby answers Plaintiff’s unverified Complaint for judicial foreclosure, specific performance and appointment of receiver, injunctive relief and breach of guarantees (hereinafter “Complaint”) as follows:”*

**GENERAL DENIAL**

*Pursuant to Code of Civil Procedure section 431.30(d), Defendants generally and specifically deny each and every allegation, and each and every part of each and every allegation, contained in the complaint, and the whole thereof, and further deny that the Plaintiff has been damaged in the sum or sums alleged, or in any other sum or sums, or at all.*

**AFFIRMATIVE DEFENSES**

*Defendants assert the following separate and affirmative defenses without admitting or acknowledging that it bears the burden of proof as to any of these defenses.*

**FIRST AFFIRMATIVE DEFENSE**

***(Failure to State Cause of Action)***

1. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff fails to state facts sufficient to constitute a cause of action against the answering Defendants.*

**SECOND AFFIRMATIVE DEFENSE**

***(Unclean Hands/Fraud/Concealment)***

2. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff failed to fully disclose the true conditions of the Guaranty Agreement to the Defendants, that the Defendants were induced into entering into the Guaranty Agreement by Plaintiff's fraud and concealment, and that Defendants were unaware of the true extent of defects in the Guaranty Agreement, and that Plaintiff is guilty of unclean hands and committed acts of fraud and concealment and thus they are precluded from recovery from Defendants.*

**THIRD AFFIRMATIVE DEFENSE**

***(Fraud in the Inducement)***

3. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff fraudulently induced Defendant to enter into transactions with them based on material misrepresentations and concealments of material facts rendering any agreements void.*

**FOURTH AFFIRMATIVE DEFENSE**

***(Laches)***

4. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff is barred from asserting the claims alleged in the*

*Complaint due to Plaintiff's delay in bringing such claims, which delay was to the detriment of Defendants.*

**FIFTH AFFIRMATIVE DEFENSE**

**(Mistake of Fact)**

5. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations which Plaintiff seeks by way of their Complaint, said claims or obligations are unenforceable by the doctrine of mistake of fact.*

**SIXTH AFFIRMATIVE DEFENSE**

**(Sham Guaranty)**

6. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations under the Guaranty Agreement which Plaintiff seeks by way of its Complaint, said claims or obligations are unenforceable due the fact that the guaranty was a sham.*

**SEVENTH AFFIRMATIVE DEFENSE**

**(Violation of California Code of Civil Procedure § 726)**

7. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations under the Guaranty Agreement which Plaintiff seeks by way of their Complaint, said claims or obligations are unenforceable due the fact that Plaintiff violated California Code of Civil Procedure § 726.*

**EIGHT AFFIRMATIVE DEFENSE**

**(Violation of California Business and Professions Code § 17200)**

8. *As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that if there presently exists or ever existed, any or all of the alleged rights, claims or obligations under the Guaranty Agreement which Plaintiff seeks by way of their Complaint, said claims or obligations are unenforceable due the fact that Plaintiff engaged in conduct constituting a "Bait and Switch" and violated California Business and Professions Code § 17200.*

**NINTH AFFIRMATIVE DEFENSE**

**(No Breach of Duty)**

9. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege they exercised ordinary care, caution and prudence to avoid the alleged loss by Plaintiff, and thus Defendants did not breach a duty to Plaintiff herein.

**TENTH AFFIRMATIVE DEFENSE**

**(Reasonable Commercial Standards)**

10. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that at all times relevant to this action, the answering Defendants acted within the course and scope of reasonable commercial standards.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Plaintiffs Breach)**

11. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff has not performed all of the conditions of the alleged contract(s) on its part to be performed, and that Defendants' duty to perform their obligations under the contract(s), if any, between them and Plaintiff has been excused by Plaintiff's material breach of said contract(s) in that Plaintiff has failed to perform the acts required of Plaintiff thereunder.

**TWELVETH AFFIRMATIVE DEFENSE**

**(Public Policy)**

12. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that the Complaint and each cause of action contained therein are barred by public policy.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Uncertainty)**

13. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that the causes of action in said complaint are uncertain and ambiguous as to Plaintiff's claims for damages against Defendants.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Accounting)**

14. As and for a separate and distinct affirmative defense to the Complaint, Defendants allege that Plaintiff has failed to account the amount of the outstanding loan and has miscalculated the interest and/or failed to account and credit for payments made

*by Defendants such that the causes of action in said complaint claiming specific remedy and damages are barred against Defendants.*

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Right to Amend)**

42. *As and for a separate and distinct affirmative defense to the Complaint, Defendants reserve the right to amend their answer herein, including the addition of affirmative defenses, after pleading and discovery in preparation for trial.*

**PRAYER**

*WHEREFORE, Defendant prays that judgment against Plaintiff as follows:*

1. *That Plaintiff take nothing by virtue of its Complaint;*
2. *That the Complaint be dismissed with prejudice;*
3. *For costs of suit incurred herein, including reasonable attorneys' fees; and*
4. *For such other and further relief as the Court deems just and proper."*

Respondents respectfully request that the Stipulations of City National Bank and the Division of Water and Audits Regarding Certain Issues be denied in its entirety, as the OII is the improper venue for making decisions in the foreclosure matter, currently before the Superior Court.

Respectfully submitted,

/s/ NAZAR NAJOR

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Nazar Najor

In Pro Per  
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Dated: March 18, 2013