



# City of South Lake Tahoe

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## CITY ATTORNEY STAFF REPORT CITY COUNCIL MEETING OF FEBRUARY 9, 2010

TO: Honorable Mayor and City Council Members

FROM: Patrick L. Enright, City Attorney

RE: **Annual Litigation Report**

DATE: February 1, 2010

### **RECOMMENDATION:**

Receive and file.

### **ISSUE AND DISCUSSION:**

Pursuant to City Code §2-68, a report on the status of litigation in which the City has an interest is to be made to the City Council annually. This report is filed in compliance with that requirement. The initials within parentheses denote the attorney handling the case, i.e., (CA) for City Attorney, (GT) for Gayle Tonon, Tonon & Associates, (FG) for Francis Goldsberry.

### **LITIGATION FILED THIS PERIOD**

#### **COLLECTION ACTIONS FILED BY THE CITY**

**City v. Charpentier, et al.**: Small Claims Court complaint filed August 11, 2008, regarding unpaid TOT, interest and penalties owed to the City in amount of \$2,403. Small Claims Trial held on March 31, 2009. Decision for City, attempting collection from Defendant.

**City v. Greg Roehl dba Tahoe Screenworks**: Small Claims Court complaint filed December 30, 2008, regarding defaulted Economic Development Loan in the amount of \$5,000. Small Claims Court Hearing held on March 25, 2009. Judgment for City.

**City v. Majid Eslami, et al.**: Superior Court complaint filed January 29, 2009, regarding defaulted Economic Development Loan in the amount of \$60,424. Defendants served, Defendant Van Valkenburg dismissed without prejudice due to

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filing bankruptcy. City attempting to negotiate settlement plan with remaining Defendant Eslami.

**City v. Daniel Thomas, et al.**: Superior Court complaint filed March 17, 2009, regarding unpaid TOT, interest and penalties owed the City in the amount of \$23,223. Trial held on November 2, 2009. Default Judgment granted to City.

**City v. James Winters dba Area 51, et al.**: Superior Court complaint filed April 28, 2009, regarding defaulted Economic Development Loan in the amount of \$23,223. Defendant served and appeared in Court. Court-approved settlement agreement agreed to by all parties. Defendant Winters to make 39 monthly payments of \$500.00.

**City v. Thelander, Inn at Heavenly, et al.**: Superior Court complaint filed on September 25, 2009, regarding unpaid TOT, interest and penalties owed the City in the amount of \$43,713.90. Defendants served, not yet appeared. City Attorney currently in settlement negotiations with Defendants' attorney.

**City v. Syed Chowdary, dba Monaco Motel, et al.**: Superior Complaint filed on September 25, 2009, regarding unpaid TOT, interest and penalties owed the City in the amount of \$8,205.72. City is attempting to negotiate payment plan but will vigorously pursue a judgment from Superior Court.

**City v. Syed Chowdary, dba Lone Pine Motel, et al.**: Superior Complaint filed on September 25, 2009, regarding unpaid TOT, interest and penalties owed the City in the amount of \$15,125.38. City is attempting to negotiate payment plan but will vigorously pursue a judgment from Superior Court.

**City v. Mark Lilly, et al.**: Superior Court complaint filed on November 9, 2009, regarding delinquent/defaulted Economic Development Loan in the amount of \$38,168.66. Summons and Complaint currently out for service of process. CMC set for March 1, 2009.

#### **ACTIONS FILED AGAINST CITY**

**Thang Vu v. Ronald Ticknor, City, et al.**: Plaintiff filed a Writ of Mandate/Declaratory Relief/Complaint for Inverse Condemnation and Equitable Estoppel regarding right to build an open space easement on property. City filed demurrer to complaint, et al. Demurrer without leave to amend granted to City and Ticknor on all causes of action. Plaintiff has filed an appeal to demurrer ruling. City will vigorously defend any appeal of Court's order.

**Area Transit Management, et al. v. City, et al.** Former Bus Service provider filed complaint in the Eastern District of California Federal Court for Breach of Contract and Violation of Due Process regarding City's Termination of Agreement. City filed Motion to Dismiss which was granted without leave to amend. To date, no action has been filed by Plaintiff ATM in El Dorado Superior Court. Will continue to monitor for developments.

**J.A. Gonsalves & Son Construction v. Central Striping Service, et al.:** General Contractor alleges non-payment by Central Striping for "Y" striping project. City to file response to Complaint/Cross-Complaint.

#### **ACTIONS FILED BY CITY**

**Sierra Forest Legacy v. California Regional Water Quality Control Board, et al.:** Original complaint alleges violation of Water Code and CEQA. City filed Motion to Intervene, which was granted. City filed a Complaint.

#### **PENDING LITIGATION**

**U.S.A. vs. El Dorado County and City of South Lake Tahoe:** This case was filed as a result of contamination found at the Old Meyers Landfill. The City is a defendant because the City used the disposal site, along with El Dorado County. The litigation is filed in U.S. District Court in Sacramento. An insurance policy was located for the relevant time period; this insurance company has agreed to pay for the City's legal costs to defend this case. The City has hired specialized legal counsel, Francis Goldsberry. Case has settled, awaiting finalization from USDC. (FG).

**Atagnan v. City:** Plaintiffs allege that City maintained a dangerous condition of public property by failing to maintain stop sign in an unobstructed manner, causing the death of minor's father. The case has been turned over to PARSAC and is being vigorously defended and is set for trial on March 01, 2010. (GT).

#### **CASES CLOSED THIS PERIOD**

**McGarrity v. City, STRA, et al.:** Plaintiffs allege various violations of the Labor Code (workers allegedly not paid all of their wages by subcontractor). Tendered to Lake Tahoe Development Company for indemnity and complete defense, which is being provided at no cost to the City or STRA. (Dennis Cook representing City and STRA). City/STRA dismissed from action on October 15, 2008.

**STRA v. Pattison, et al.:** STRA sought reimbursement from Defendant for undervalued appraisal which caused increased payment to Bandana's Restaurant. Case settled, City has received all payments due case has been dismissed. (MR)

**Bassett vs. City:** This lawsuit arises out of the death of fourteen year old Marissa Bassett who was killed by a convicted drunk driver. Plaintiffs allege that City was negligent and caused the wrongful death of their daughter due to a dangerous condition of public property. A settlement was previously reached with Plaintiffs, the parents of the deceased teenager, and has now been finalized. Case dismissed on September 15, 2008. (CA).

**Lakeside Park Association v. City:** Plaintiffs allege that City was negligent in designing, constructing and installing water quality improvements such that said

improvements caused water to be released, allegedly damaging Plaintiffs' marina. City filed a Motion for Summary Judgment, which resulted in Plaintiffs' filing a First Amended Complaint, which the City has answered. Case dismissed with each side bearing their own costs.

**Wayne v. STRA, et al.**: Plaintiff alleged injuries based upon wrongful eviction. Dismissal demanded by City Attorney because Plaintiff did not comply with Government Code requiring the filing of a claim with a public entity. Case Dismissed.

**Kelly v. City.** (Small Claims Action) Plaintiff alleged the City was responsible for damage to garage doors due to snow removal operations. Small claims court hearing was held and judgment for City was entered.

**Rogers v. City.** Plaintiffs allege personal injury and intentional tort due to alleged interference with business relationship forcing Plaintiffs to vacate lease, lose business and suffer damages. The City filed Demurrer to Third Amended Complaint, Demurrer granted, without leave to amend. Case dismissed on April 30, 2009.

**Kerson v. City, et al.**: Plaintiff alleges personal injury and other damages due to alleged negligence by City employee in operation of snow plow during snow removal operations. Case settled and dismissed.

**Melissa Morgan v. City, et al.**: Plaintiff alleges that City maintained a dangerous condition of public property by failing to maintain stop sign in an unobstructed manner, causing personal injury. Case Settled on March 4, 2009. (GT)

**FINANCIAL AND/OR POLICY IMPLICATIONS:**

City Attorney



Patrick L. Enright

cc: David M. Jinkens, City Manager

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