

TIMING OF CIVIL SUIT QUESTIONED AS TRINITAS TRIAL REACHES FIRST TEE

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October 14, 2011
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MODESTO - A long-awaited trial on whether commercial golf is legal on farmland in Calaveras County opened with fireworks Thursday in U.S. Bankruptcy Court in Modesto.

The owners of the 280-acre Trinitas golf course on the west edge of Calaveras County say their course is "agritourism" needed to support their olive orchard. County officials say golf is not agritourism.

The dispute is in bankruptcy court, because the resolution could affect whether Trinitas owners Michael and Michelle Nemees can repay millions of dollars they borrowed, much of it from a bank and private investors in Stockton. The Nemees filed for bankruptcy in 2009 after the Calaveras County Board of Supervisors twice voted against legalizing golf on a course the Nemees built without permits on their olive ranch on Ospital Road, south of Wallace.

The fireworks started minutes into Thursday's proceedings when Calaveras County Counsel Janis Elliott accused the Nemees and their attorney, Ken Foley, of trying to skew the proceedings by filing a \$12 million civil rights lawsuit just days before the trial.

"I believe this was filed to intimidate the witnesses," Elliott said, referring to several former county officials she plans to call as part of her defense who are named in the suit.

Foley said the timing of the lawsuit filed last Friday had nothing to do with the agri-tourism trial. He said he had to file the suit because a statute of limitations would expire soon, and he didn't want to have his clients lose the chance to win compensation for having their civil rights violated.

The civil rights lawsuit alleges that former Calaveras County planner Shaelyn Strattan, former Planning Director Robert Sellman and former interim Community Development Agency Director Brent Harrington violated the Nemees' constitutional rights to due process by mishandling their efforts to win legal approvals for Trinitas and by telling them they couldn't operate a golf course on land zoned for farming.

Elliott said she had not been served with a copy of the lawsuit and that she only learned about it after 3 p.m. Wednesday, when she checked the U.S. Eastern District California Bankruptcy Court website. She asked Judge Ronald Sargis to delay the trial to give her witnesses time to consult attorneys before they testify in the agritourism trial.

Sargis called a 15-minute halt to the proceedings, retreated to his chambers to consider Elliott's request and then came back to say the trial would go on. He noted that two years already have passed since the Nemees filed for bankruptcy.

Foley then called witnesses to make the case that golf is agritourism. One, University of California, Berkeley, agricultural economics Professor David Zilberman, said that golf is a form of agriculture that produces recreation.

"Just a product like wood or food," he said.

And former Calaveras County farm adviser Ken Churches, who flew in from his retirement home in Hawaii for the trial, said the same thing.

"The agricultural product is recreation," Churches said.

Elliott fought back, prompting Churches to admit that elected county leaders have the right to determine their own zoning codes. But she saved her sharpest rebukes for Michael Nemees.

During his initial testimony, Nemees repeated his criticisms of county officials, saying they at times told him his golf course was perfectly legal and then later mishandled his application to get it legalized.

When Elliott cross-examined Nemees, she twice got him to claim that he didn't bother reading documents he signed, including a 2003 bank loan document indicating he was at that time building a commercial golf course.

Nemees and his attorneys continue to insist that it wasn't until late 2004 that the Nemees decided to take what had been just a few private golf holes and make a full-scale commercial course.

The trial will continue at 9:30 a.m. today and is expected to conclude Monday.

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