

JUDGE RULES BANK CAN TRY TO UNLOAD TRINITAS PROPERTY AT MARCH SALE

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February 10, 2012
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SACRAMENTO - A U.S. bankruptcy judge approved a Stockton bank's request Thursday to sell the 280-acre Trinitas golf course property at a foreclosure sale.

The golf course was built without permits in an agricultural preserve south of Wallace on the western edge of Calaveras County. Owners Mike and Michelle Nemees filed for bankruptcy in 2009 after Community Bank of San Joaquin foreclosed and Calaveras County's Board of Supervisors twice voted against measures that would have given the golf business legal status.

In his tentative ruling before Thursday's hearing, Judge Ronald Sargis noted that allowing the foreclosure sale "brings an end to the belief and dreams of the Nemees and their investors to have a commercial golf course."

Sargis wrote that foreclosure sale does not "unjustly harm" the Nemees.

"Based on the economics shown in this case, there is no reasonable reorganization or ability to pay the Community Bank secured claim."

The Nemees and their attorneys do not agree. They've argued all along that Calaveras County officials are wrong to say that zoning codes ban golf courses on agricultural land. Although they lost a trial last year on that issue, they are now appealing that loss to the U.S. District Court in Fresno.

The dispute over Calaveras County's agritourism zoning ordinance entered the federal court system via bankruptcy court, because the Nemees argued that winning that case was key to the economic success of the golf course.

"To a great extent, it has been a viable operation, despite the negative publicity, despite the protests," Malcolm Gross, an attorney representing the Nemees, said during Thursday's hearing.

Gross hinted that people with deep pockets may be waiting in the wings to pay the Trinitas debts. "We have been talking to people who are interested in putting some money up," Gross said.

Sargis said his review of the Nemees' financial statements indicates the business is becoming less viable rather than more viable with time.

Attorney Mark B. Rishwain of Stockton, who with his wife, Michelle, loaned the Nemees \$600,000, said he may be among those willing to bail out Trinitas and the Nemees.

"We do have the willingness and ability to work with them," Rishwain said during a telephone appearance at Thursday's hearing.

Dennis Hauser, an attorney representing Community Bank of San Joaquin, said the foreclosure sale will be in early March rather than the previously scheduled Feb. 17. Hauser said the delay is necessary to allow time to send out required notices.

Sargis also noted that the time before the sale gives Trinitas supporters time to come up with a way to avoid the auction.

"Maybe they come up with a sack of money and say (to the bank), 'We want to buy you out of this with a discount,' " Sargis said.

The Nemees owe more than \$3 million to Community Bank of San Joaquin, but the Trinitas land is worth only about \$1.8 million, according to court documents.

It is still possible that a higher court could halt the auction pending appeal of the agritourism case. Gross said he is making a request for a stay to the U.S. District Court in Fresno.

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