

BANK ASKS JUDGE TO SEIZE TRINITAS

IT ARGUES COURSE CAN'T RECOVER FROM BANKRUPTCY

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SAN ANDREAS - Stockton-based Community Bank of San Joaquin is asking a judge to let the bank seize the Trinitas golf property south of Wallace.

U.S. Bankruptcy Court Judge Ronald Sargis is scheduled to consider the request on Dec. 7 in Modesto. If granted, it would likely mean the end of operation for Trinitas, which was built without permits in an agricultural preserve.

Trinitas owners Mike and Michelle Nemees have struggled for half a decade to win legal status for the course, first by applying for county zoning changes and use permits after the fact and then through various lawsuits.

In documents filed this week, the bank argues that the Nemees have no reasonable hope of reorganizing the operation and emerging from bankruptcy. Among other things, the bank notes that Sargis recently signed an order that will allow Colonial Pacific Leasing in January to repossess the golf carts at Trinitas.

"The golf course cannot survive without golf carts given the terrain which encompasses the golf course," bank attorney Dennis Hauser wrote in one filing.

The 280-acre site is in rolling oak woodlands on the western edge of Calaveras County. The beauty of the terrain was part of what inspired the Nemees to create what they hoped would be a world-class golf course.

Sargis timed the Jan. 27 repossession of the 74 golf carts to coincide with the execution of a not-yet-posted decision in which Sargis indicated he will rule against the Nemees. That pending decision is for a lawsuit over whether golf is a legal form of agritourism in Calaveras County.

The trial on the agritourism issue concluded Oct. 17. The suit was originally filed in Calaveras County but was heard in Bankruptcy Court, because the Nemees argued that forcing the county to recognize golf as a legal form of agritourism was key to making a bankruptcy reorganization viable.

The Nemees filed for bankruptcy in 2009, shortly after the Calaveras County Board of Supervisors voted for the second time that year to deny legal status to Trinitas.

Sargis originally said he expected to file his decision in the agritourism case by Oct. 27. The fact that he hasn't filed it yet, the Nemees' attorney said, unfairly puts his clients in legal limbo while the bank seeks to take the property.

Malcolm D. Gross, who is representing the Nemees in Bankruptcy Court, said that if the Nemees appeal Sargis' awaited ruling, then they could get a stay that could allow them to keep the golf carts and their property and continue operating. But without a formal ruling, the Nemees can't appeal and Gross can't determine whether they have the basis for an appeal.

Gross said his clients "definitely plan to object" to the bank's request to take the Trinitas property. That request is called a "relief from stay," because it would lift the legal stay that has barred a foreclosure sale since the Nemees filed for bankruptcy two years ago.

Gross said the lack of a ruling in the agritourism case means the bank's relief from stay request is premature.

"The relief from stay is based on hearsay," he said.

As to the larger question of whether the Nemees still have a reasonable plan for reorganizing, operating the golf course and paying their debts, Gross said simply, "I don't know."

"If I had the (agritourism) decision in my hand, I could give you a definitive answer," he said.

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