

TRINITAS OWNERS ORDERED TO MAKE BANK PAYMENTS

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MODESTO - A federal bankruptcy judge ordered Trinitas golf course owners Mike and Michelle Nemees on Wednesday to begin paying \$6,360 a month to Community Bank of San Joaquin to compensate for the harm the protracted legal battle over the golf course is doing to the bank.

The bank had hoped to persuade Judge Ronald H. Sargis to allow the bank to seize the 280-acre property south of Wallace and auction it at a foreclosure sale. The bank loaned about \$2.4 million to the Nemees, according to court documents.

But an appraisal of the property conducted for the bank found it is probably only worth \$1.8 million, and then only if the Nemees succeed in getting county officials to recognize golf there as a legal activity.

The golf course was built in an agricultural preserve without permits, and the Calaveras County Board of Supervisors has voted twice directly and once indirectly since 2009 to reject efforts to legalize Trinitas.

Meanwhile, with every month that passes, interest accrues on back taxes the Nemees haven't paid and on a \$666,000 loan made to the Nemees by Mark and Michelle Rishwain of Stockton.

The tax lien and the Rishwains' loan are senior to the bank loan, which means each month of delay eats into what the bank could expect to recover after a foreclosure sale.

"This case now has whiskers on it," said Dennis Hauser, an attorney for Community Bank of San Joaquin.

The bankruptcy case was originally filed in October 2009. That same year, the Nemees filed a lawsuit seeking to force Calaveras County to recognize golf as a legal form of agritourism and thus a suitable adjunct to an olive orchard on the property.

If the Nemees win that suit, they have said, it would eliminate regulatory shackles that have cast a shadow over what they say is otherwise a thriving business. Because of its bearing on the viability of Trinitas, that suit also is being handled in bankruptcy court in Modesto rather than in Calaveras County, where it was originally filed.

Sargis apologized to Hauser for the whiskers on the case, noting that he had delayed scheduling a trial on the agritourism suit in hopes that county leaders and the Nemees might negotiate a

settlement out of court. Hopes for that settlement were dashed last week, however, after the county Board of Supervisors rejected a proposal to amend county zoning rules to make golf legal on land zoned for agriculture. That change would have given the Nemees a path toward legalization.

"I let the adversary case go back burner," Sargis said. The judge also acknowledged that he has only been a federal judge for 14 months, and that the Trinitas proceeding has been a relatively "unusual" case.

Wednesday, however, Sargis promised prompt action on matters related to Trinitas. He scheduled a trial on the agritourism issue to start Oct. 13, and he promised to set immediate hearings should the Nemees fail to pay Community Bank of San Joaquin.

If for some reason the Nemees don't pay, the judge could then grant Community Bank of San Joaquin the right to seize the property and auction it.

"I'm not going to be very impressed if a modest payment of \$6,000 per month cannot be paid or if the current taxes can't be paid," Sargis said.

Whether Trinitas is a viable business is a key dispute between the Nemees and Community Bank of San Joaquin.

While other creditors of the Nemees have expressed faith in Trinitas, the bank has said in its filings that even if legal, Trinitas could not generate enough revenue to pay off all its debts.

Hauser noted during Wednesday's hearing that Elkhorn Country Club in Stockton, one of four golf courses that the bank's appraiser considered when valuing Trinitas, closed in February because of tough economic conditions.

"In today's economic climate, people have other uses for discretionary income," Hauser said.

Malcolm Gross, an attorney for the Nemees, responded that his clients' business is not comparable to Elkhorn.

"Trinitas, according to my client, has booked tournaments from the end of this month through July," Gross said.

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