

FILED

2012 APR 18 PM 2:42

MARY ANN GRAY
SADIE SULLIVAN
DIST. COURT CLERK

1 Case No. 10197

2 Dept. No. 1

3 The undersigned hereby affirms this document
4 does not contain a social security number.

5
6
7 IN THE SIXTH JUDICIAL DISTRICT COURT

8 COUNTY OF LANDER, STATE OF NEVADA

9 MICHAEL MARKING and
10 ELIZABETH FLEMING,

11 Plaintiffs,

**DEFENDANT'S OPPOSITION TO PLAINTIFFS'
12 MOTION TO DISQUALIFY ATTORNEY**

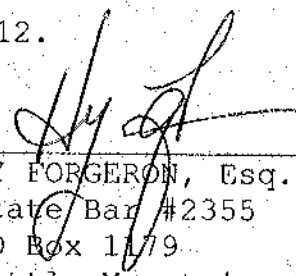
13 -vs-

14 AUSTIN ROPING CLUB.

15 Defendant.

16 COMES NOW, Defendant above-named, by and through it's
17 attorney HY FORGERON, Esq., and opposes Plaintiffs' Motion To
18 Disqualify Attorney, all as is more fully set forth in the Points
19 and Authorities annexed hereto.

20 Dated this 18th day of April, 2012.

21
22 
23 _____
24 HY FORGERON, Esq.
25 State Bar #2355
26 PO Box 1179
Battle Mountain, NV 89820
775-635-8100
Fax: 775-635-3118
Attorney for Defendant

1 I.

2 POINTS AND AUTHORITIES

3 A. Procedural Background

4 Defendant is a nonprofit cooperative corporation without
5 stock organized under Title 7, Chapter 81 of the Nevada Revised
6 Statutes. Defendant's formal corporate name is denominated in
7 it's Articles Of Incorporation as "The Austin Roping Club,
8 Incorporated" and shall hereinafter be referred to as Defendant or
9 as "the Club".

10 On or about February 22, 2012, the Club's resident agent,
11 Joseph P. Ramos, was served with a copy of the Complaint filed by
12 the Plaintiffs herein on February 7, 2012.

13 Defendant, by and through its attorney Hy Forgeron, Esq.,
14 filed its Motion For More Definite Statement on March 13, 2011.

15 No Opposition to Defendant's Motion For More Definite
16 Statement having been filed within the time allowed by law,
17 Defendant filed its Request For Submission on April 2, 2012.

18 This Court's Order Granting Defendant's Motion For More
19 Definite Statement was filed on April 5, 2012.

20 On April 12, 2012, Plaintiffs filed their Motion To
21 Disqualify Attorney, which is the subject of this Opposition.

22 B. Argument

23 1. Plaintiffs have no standing to object to counsel
24 selected by the Defendant.

25 The Defendant was served on February 22, 2012. Defendant's
26 President, Ruben Gallegos, and Secretary, Sissy Gallegos, met with

1 the undersigned attorney (hereinafter referred to as "counsel") on
2 March 11, 2012 for the purpose of discussing the pending lawsuit.
3 As a result of that meeting, counsel agreed to represent the
4 Defendant and filed the Motion For More Definite Statement on
5 March 13, 2011, which was the last day for the Defendant to
6 respond.

7 Defendant is a nonprofit cooperative corporation without
8 stock. Its participants are referred to as "members" rather than
9 as the traditional "stockholders" or "shareholders". Plaintiffs
10 are not members of the corporation.

11 In Farmers Union Oil Co. v. Maixner, 376 N.W.2d 43 (N.D.
12 1985), one Maixner, a third party, sought to object to the
13 institution of a lawsuit by one Kaufman, who was chairman of the
14 board of Farmers Union. In disallowing the objection, the Court
15 stated:

16 "Maixner has questioned the authority of Kaufman to initiate
17 a lawsuit on behalf of Farmers Union. Whether or not Kaufman had
18 actual authority to initiate a lawsuit is unimportant as Maixner
19 cannot object to Kaufman's alleged lack of authority. As a general
20 rule, if a corporation does not object to an officer's lack of
21 authority, a third person may not object. Village of Brown Deer v.
22 City of Milwaukee, 16 Wis.2d 206, 114 N.W.2d 493, 497 (1962).

23 Farmers Union did not object to any lack of authority on the part
24 of Kaufman; therefore, Maixner may not do so." (376 N.W.2d at 46)

25 **2. Assuming, arguendo, that Plaintiffs have standing, their**
26 **objection fails under the doctrine of ratification.**

1 In accordance with general principles of agency, a
2 corporation may ratify an act of its officer subsequent to the
3 performance of the act, even though the act itself was not
4 originally authorized.

5 In East Central Oklahoma Elect. Co-op, Inc. v. Oklahoma Gas &
6 Elect. Co., 505 P.2d 1324 (Okla. 1973), the Court defined
7 "Ratification" as "the adoption of a contract which relates back
8 to the execution of the contract and renders it obligatory from
9 its inception." That Court further held that "A corporation, like
10 a natural person, may ratify, affirm and validate any contract
11 made or done in its behalf which it was capable of making in the
12 first instance." (both quotes 505 P.2d at 1329).

13 In Halliburton Co. Benefits Committee v. Graves, 463 F.3d 360
14 (5th Cir. 2006), the Federal Court stated:

15 "In any event, even if the Vice President's signature had
16 been required . . . to amend the retiree program, Halliburton's
17 subsequent actions served to ratify the provision *ex post*. See
18 *Curtiss-Wright Corp.*, 514 U.S. at 85, 115 S.Ct. 1223: . . . see
19 also 2A WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF
20 PRIVATE CORPORATIONS § 764.10 (perm. ed., rev. vol.2001) . . . ("A
21 corporation may bind itself by ratifying an act done by an agent
22 of its subsidiary company."). Under the doctrine of ratification,
23 "[a] corporation may render itself liable for unauthorized acts of
24 its officers by subsequently ratifying them." 2 FLETCHER
25 CYCLOPEDIA § 434; see *Deppenbrock v. Cigna Corp.*, 389 F.3d 78, 83
26 (3d Cir.2004) ("The doctrine of ratification provides that an

1 improperly authorized amendment may be ratified *ex post* by
2 subsequent acts.").

3 See also, Sparks v. Alpha Tau Omega, Inc., et al, 127 Nev.
4 Advance Opinion 23 (May 26, 2011).

5 On April 10, 2012, Defendant corporation held a duly noticed
6 special meeting called by its President pursuant to Article IV,
7 Section 3 of the by-laws. A copy of the meeting notice and agenda
8 is attached hereto and made a part hereof by reference as
9 Defendant's Exhibit "A".

10 At said special meeting, Defendant's Executive Board,
11 consisting of the President, Vice-President, Secretary and
12 Treasurer voted unanimously to adopt Executive Board Resolution
13 No. 1-12(EB), a copy of which is attached hereto and made a part
14 hereof by reference as Defendant's Exhibit "B". The Resolution
15 was made, seconded, voted upon and adopted in an open session of
16 the meeting, not in a closed session.

17 At said special meeting, the membership then present and
18 constituting a quorum, voted unanimously to adopt Membership
19 Resolution No. 1-12(M), a copy of which is attached hereto and
20 made a part hereof by reference as Defendant's Exhibit "C". The
21 Resolution was made, seconded, voted upon and adopted in an open
22 session of the meeting, not in a closed session.

23 It is clear from both Resolutions that the Defendant has
24 retained counsel to represent the Defendant in this action and has
25 further ratified all actions taken by counsel on behalf of the
26 Defendant in this action, *nunc pro tunc* to March 13, 2012.

1 II.

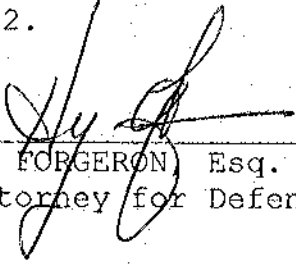
2 **CONCLUSION**

3 It is therefore respectfully submitted that, Plaintiffs
4 having no standing to object, their Motion should be denied. If
5 the Court believes Plaintiffs should be heard, their Motion still
6 fails under the doctrine of ratification.

7 WHEREFORE, Defendant requests relief from this honorable
8 Court as follows:

- 9 1. That Plaintiffs Motion To Disqualify Attorney be denied;
10 2. For an award of attorney's fees and costs associated
11 with the preparation and presentation of this Opposition;
12 3. For such other and further relief as to the Court may
13 seem just and proper in the premises.

14 Dated this 18th day of April, 2012.

15
16 
17 _____
18 HY FORGERON Esq.
19 Attorney for Defendant

20 AFFIDAVIT OF COUNSEL

21 STATE OF NEVADA)
22) ss.
23 COUNTY OF LANDER)

24 COMES NOW, HY FORGERON, who, being first duly sworn, on oath,
25 deposes and says:

- 26 1. Affiant is a member in good standing of the State Bar of
Nevada, State Bar #2355.
2. Affiant is the attorney of record for the Defendant
herein.

DEFENDANT'S EXHIBIT

"A"

SPECIAL AGENDA
AUSTIN ROPING CLUB
April 10, 2012
LOCATION: AUSTIN FIRE HOUSE

6:30 P.M. CALL TO ORDER

PLEDGE OF ALLEGIANCE

*Discussion for possible action regarding approval of Agenda Notice.

*Discussion for possible action regarding approval and acceptance of Minutes of:
March 6, 2012

Board Member to report on meetings attended.

*Discussion for possible action regarding Payment of the Bills.

*Discussion for possible action regarding Treasures Report.

PUBLIC COMMENT-For non-agenized items only. Persons are invited to submit comments in writing and/or attend and make comments on any item at the Board meeting. All public comments may be limited to Five (5) minutes per person, at the discretion of the board. Reasonable restrictions may be placed on public comment based upon time, place and manner, but public comment based upon viewpoint may not be restricted.

Public comment is encouraged on all Agenda items.

Correspondence

*(1) Discussion and possible action regarding any Club Correspondence regarding letters, bills and other matters relating thereto.

Public Comment

Gridley Days

*(1) Discussion for possible action regarding The ARC putting on the 150th and G.D. Bar-B-Q. We did do the BBQ a few years ago and it was very successful.

Public Comment

CORRAL BOARD UPDATE

*(1) Discussion and possible action regarding Corral Boards pictures and complaints.

Public Comment

RETENTION OF ATTORNEY

*(1). Discussion and action on retention of attorney Hy Forgeron to represent the Club in the against us by Michael Marking and Elizabeth Fleming entitled Marking and Fleming vs. Austin Roping Club, Case No. 10197, Sixth Judicial District Court, Lander County, Nevada.

1
DEFENDANT'S EXHIBIT A

Executive/Closed Session

***(1).** Discussion and action on lawsuit brought against us by Michael Marking and Elizabeth Fleming entitled Marking and Fleming vs. Austin Roping Club, Case No. 10197, Sixth Judicial District Court, Lander County, Nevada, including possible settlement thereof. (NRS 241.015 (2) (b) (2) excepts from the definition of "Meeting," for the purposes of the Open Meeting Law, a meeting of a quorum of a public body "To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both." pursuant to NRS 241.030.)

MEETING BACK IN ORDER

Election of Directors

***(1).** Discussion and action on calling for the election of Directors to fill vacancies and setting a date therefore at a regular meeting.

Amending existing By-Laws

***(1).** Discussion and action regarding the advisability of amending the existing By-Laws and Corral By-Laws, requesting drafts therefore, and setting a date for inclusion thereof at a regular meeting.

Anything for the good of the Club and Members

Public Comment

- * Discussion for possible action regarding future agenda items.
- * Discussion for possible regarding payment of bills.

Public Comment

***ADJOURN**

***Denotes discussion and action item with information provided at the meeting**

NOTE: TIMES ARE APPROXIMATE

This is a tentative schedule for the meeting. The Board reserves the right to take items out of order to accomplish business in the most efficient manner. The Board may combine two or more agenda items for consideration. The Board may remove an item from the agenda or delay discussion relating to an item at anytime.

DEFENDANT'S EXHIBIT
"B"

THE AUSTIN ROPING CLUB, INCORPORATED
EXECUTIVE BOARD RESOLUTION NO. 1-12(EB)

WHEREAS, The Austin Roping Club, Incorporated (hereinafter referred to as "the Club") met at a special meeting called by the President on Tuesday, April 10, 2012, and

WHEREAS, a quorum was present at said meeting, and

WHEREAS, by motion duly made and seconded, the officers and directors of the Club then present voted to go into executive session to receive information from attorney Hy Forgeron, Esq. regarding potential or existing litigation involving a matter over which the Club has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both, pursuant to ~~NRS~~ ~~241.015(2)(b)(2)~~, which is the lawsuit filed against the Club by former members Michael Marking and Elizabeth Fleming, being Civil Action No.10197, Department No. 1, Sixth Judicial District Court, Lander County, Nevada, and

WHEREAS, Attorney Hy Forgeron, Esq. was present during the said executive session and reported about the said lawsuit, and

WHEREAS, by motion duly made and seconded, the officers and directors of the Club then present in executive session voted to adjourn executive session and to return to general session, and

DEFENDANT'S EXHIBIT B

WHEREAS, it appears in the best interests of the Club to continue to defend said lawsuit,

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

1. That Attorney Hy Forgeron, Esq. be retained to represent the Club in the matter of Michael Marking and Elizabeth Fleming, Plaintiffs, vs. Austin Roping Club, Defendant, being Civil Action No.10197, Department No. 1, Sixth Judicial District Court, Lander County, Nevada, and

2. That the actions taken by attorney Hy Forgeron, Esq. on behalf of the Club in filing a Motion For Definite Statement on March 13, 2012 and his subsequent actions on behalf of the Club related to said lawsuit, to and including April 10, 2012 be, and the same are hereby ratified, adopted and confirmed, nunc pro tunc.

Proposed in general session on the 10th day of April, 2012, by

Seconded by Ruben Gallegos

Adopted by majority vote of the officers and directors present in general session.

Ruben Gallegos
Ruben Gallegos, President

Attest: Sissy Gallegos
Sissy Gallegos, Secretary

DEFENDANT'S EXHIBIT

"C"

THE AUSTIN ROPING CLUB, INCORPORATED

MEMBERSHIP RESOLUTION NO. 1-12(M)

WHEREAS, The Austin Roping Club, Incorporated (hereinafter referred to as "the Club") met at a special meeting called by the President on Tuesday, April 10, 2012, and

WHEREAS, a quorum was present at said meeting, and

WHEREAS, the President and Secretary reported to the members about the lawsuit filed against the Club by former members Michael Marking and Elizabeth Fleming, being Civil Action No.10197, Department No. 1, Sixth Judicial District Court, Lander County, Nevada, and

WHEREAS, Attorney Hy Forgeron, Esq. was present and reported to the members about the said lawsuit, and

WHEREAS, it appears in the best interests of the Club to continue to defend said lawsuit,

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

1. That Attorney Hy Forgeron, Esq. be retained to represent the Club in the matter of Michael Marking and Elizabeth Fleming, Plaintiffs, vs. Austin Roping Club, Defendant, being Civil Action No.10197, Department No. 1, Sixth Judicial District Court, Lander County, Nevada, and

DEFENDANT'S EXHIBIT C

2. That the actions taken by attorney Hy Forgeron, Esq. on behalf of the Club in filing a Motion For More Definite Statement on March 13, 2012 and his subsequent actions on behalf of the Club related to said lawsuit, to and including April 10, 2012 be, and the same are hereby ratified, adopted and confirmed, nunc pro tunc.

Proposed on the 10th day of April, 2012, by Chuck Deago.

Seconded by Denny Ashby.

Adopted by majority vote of the members present in general session.

Ruben Gallegos
Ruben Gallegos, President

Attest: Sissy Gallegos
Sissy Gallegos, Secretary