

FILED

JAN 20 2012

SAN LUIS OBISPO SUPERIOR COURT

BY: 
Jennifer Novick, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

SUNNY ACRES, INC., et al.,

Plaintiffs,

v.

COUNTY OF SAN LUIS OBISPO, SAN
LUIS OBISPO COUNTY BOARD OF
SUPERVISORS,

Defendants.

COUNTY OF SAN LUIS OBISPO,

Cross-Complainant,

v.

SUNNY ACRES, INC., DAN DEVAUL,
and DOES 1 through 20, inclusive,

Cross-Defendants.

Case No. CV 090360

**RULING ON COUNTY OF SAN LUIS
OBISPO'S MOTION FOR
APPOINTMENT OF RECEIVER**

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Introduction

This ruling addresses the long-running saga between the County of San Luis Obispo (“the County”) and Dan De Vault’s (“De Vault”) Sunny Acres recovery and housing program (collectively referred to as “Sunny Acres” or “Cross-Defendants”).

In July 2010, following *years* of contentious administrative proceedings and the filing of this lawsuit, this Court concluded that a public nuisance at Sunny Acres posed a threat to the safety and health of people living there. Sunny Acres was ordered to take prompt remedial action. An appeal was then filed by Sunny Acres, which temporarily stayed all compliance deadlines.

On June 7, 2011, the Court of Appeal affirmed the Preliminary Injunction (hereafter, “the Injunction”). Thereafter, a series of compliance hearings followed, culminating with a full evidentiary hearing in October and November 2011.

Asserting Sunny Acres has only recently and grudgingly begun to comply with the Injunction, the County’s position is that a receiver must be appointed to ensure meaningful compliance with the Preliminary Injunction. The County faults Sunny Acres for foot-dragging, most notably with respect to removal or rehabilitation of three unauthorized structures.

Sunny Acres responds that a receiver would be costly and is unnecessary because program participants now have clean drinking water from an off-site source; because the hazardous waste materials have been taken off premises; because the substandard, dangerous structures no longer serve as living quarters for program participants; and, because Sunny Acres is working diligently with the County to obtain permits to make necessary improvements.

Sunny Acres was made pointedly and unequivocally aware that it had a duty to promptly remediate its property for health and safety reasons once this Court issued Injunction, and again, when the Court of Appeal affirmed the Injunction. Having lost its appeal, a prudent litigant would have moved quickly toward the goal of compliance in an effort (at least) to show good faith and to avoid the consequences of receivership. That,

1 however, is not what has happened in the seven months since this case was affirmed on
2 appeal.

3 For their part, County officials have gone out of their way to assist Sunny Acres in
4 helping it to meet the new court-imposed compliance schedule. On the other hand, Sunny
5 Acres has responded with a continuous pattern of procrastination, neglect and delay: Sunny
6 Acres finds fault with the County at every turn, quarrels over the behavior of the County
7 officials, raises imaginary problems regarding language in the Injunction, and (until very
8 recently) has moved at a snail's pace in response to the Court orders and County permit
9 revisions and suggestions.

10 There is no doubt that receivers can be expensive propositions. Yet Sunny Acres has
11 had countless opportunities, *over more than a decade*, to correct significant violations of the
12 law on its own, without ceding control to a professional manager. Cost and control issues are
13 concepts that should have been seriously pondered long ago. While it cannot be denied that,
14 at the eleventh hour, Sunny Acres has started to pick up the pace of its compliance efforts,
15 such a Johnny-come-lately attitude is far too little and far too late in the proceedings to avoid
16 the consequences of years of obstructionist, recalcitrant tactics.

17 Recognizing that appointment of a receiver is an extraordinary step, it is nevertheless
18 fully warranted and necessary to enforce the provisions of the Injunction and abate the public
19 nuisance at Sunny Acres.

20 *Statement of Facts and Procedural History*

21 Cross-Defendant Dan De Vaul owns a 72-acre ranch at 10660 and 10340 Los Osos
22 Valley Road, out of which location he operates Cross-Defendant Sunny Acres, a non-profit
23 corporation, that describes itself as a “clean and sober living environment to those in
24 recovery from drug and alcohol addiction.”

25 Since 2001, Sunny Acres has been the subject of multiple enforcement actions for
26 land use and County and State code violations.¹ Following several years of administrative

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28 ¹ These recurring violations include, among other things, illegal habitation of unpermitted
structures, unpermitted grading and stockpiling, unpermitted construction, and improper storage of
vehicles.

1 nuisance abatement proceedings and four hearings before the County Board of Supervisors
2 (“the Board), the Board found that these violations constituted public nuisances and ordered
3 their abatement. When Sunny Acres repeatedly failed to comply with the Board’s
4 instructions, the County filed a motion for appointment of a receiver, which was later
5 withdrawn without prejudice in favor of a preliminary injunction motion intended to abate
6 the nuisance.

7 On July 2, 2010, after several hearings, the Court concluded that the evidence
8 established an ongoing public nuisance posing a threat to the safety, health and welfare of the
9 tenants on the property, and granted the County’s motion for a preliminary injunction
10 requiring Sunny Acres to take certain steps to eliminate the nuisance conditions at Sunny
11 Acres.²

12 On August 20, 2010, Sunny Acres filed a Notice of Appeal. Shortly thereafter, the
13 parties stipulated to stay proceedings relating to the Injunction pending resolution of the
14 appeal.³

15 On June 7, 2011, the Court of Appeal concluded that the Injunction was supported by
16 “overwhelming evidence” of nuisance, including longstanding violations of codes and
17 ordinances designed to protect public health and safety. The Court of Appeal stated that the
18 trial court would have abused its discretion had it *not* issued the preliminary injunction. (*See*

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20 ² In pertinent part, the Injunction requires Defendants to: (1) Have all structures (mobile homes,
21 sheds, garden sheds, tents, dairy barn, stucco barn, and RVs) vacated, except the legal farmhouse
22 and Mr. De Vault’s apartment, by August 20, 2010; (2) No further rental or program payments
23 shall be collected from any tenant until further order of the Court; (3) Ensure that mobile homes,
24 sheds, garden sheds, tents, dairy barn, stucco barn, and RVs remain unoccupied until further order
25 of the Court; (4) Provide an alternate safe and secure source of drinking water (such as bottled
26 water from an approved vendor) to everyone on the property [...]; (5) [Properly store, label,
27 manage, and dispose of hazardous wastes]; (6) Return the stucco barn to an ag-exempt barn, or
28 demolish it, no later than October 1, 2010 [...]; (7) Remove all but 10 stored RVs owned by
tenants at the De Vault property by October 1, 2010; (8) Return the dairy barn to an ag-exempt
barn or demolish it by October 1, 2010 [...]; (9) Use the garden sheds only for storage and not
human habitation; (10) Demolish or receive authorization for the accessory shed and bathroom
near farmhouse/stucco barn by October 1, 2010 [...].

³ Ordinarily, enforcement of a mandatory injunction is automatically stayed by the filing of an
appeal. (Weil and Brown, *Cal. Prac. Guide, Civil Proc. Before Trial* (The Rutter Group 2011)
§9:549, citing CCP §916; *Kettenhofen v. Sup. Ct. (Heath)* (1961) 55 Cal.2d 189, 191.)

1 *Sunny Acres, Inc. v. County of San Luis Obispo* (Cal. Ct. App., June 7, 2011, B227206)
2 (2011 WL 2206838).

3 On July 15, 2011, the Court granted the County's motion to lift the stipulated stay and
4 set a revised schedule for compliance. Sunny Acres was ordered to:

5 (1) vacate all unpermitted structures by August 5, 2011; (2) collect no further
6 payments from residents until further order; (3) ensure that all unpermitted
7 structures remained unoccupied; (4) provide an alternate source of drinking
8 water and submit well permits or reports by August 12, 2011; (5) demolish or
9 obtain permits for the stucco barn, dairy barn, and accessory shed/bathroom
10 by August 15, 2011; (6) demolish or return to ag-exempt status the stucco
barn, dairy barn, and accessory shed/bathroom by October 7, 2011; and (7)
remove all but 10 stored RVs from the property by October 7, 2011.

11 A hearing to determine compliance was set for August 25, 2011. During the interim,
12 the County was authorized to conduct periodic inspections to determine the status of
13 compliance.

14 At the August 25, 2011 compliance hearing, the Court was shown convincing proof
15 that Sunny Acres had yet to cure the well contamination, had yet to provide a safe drinking
16 water source, and had yet to vacate the structures that were subject to the Injunction. Instead,
17 Sunny Acres had erected additional unpermitted structures, had left code-violating electrical
18 connections attached to the RVs, and still had refrigerators and personal effects in the sheds.

19 Based on the results of this hearing, the County again moved for appointment of a
20 receiver. The Court held an evidentiary hearing on October 20, October 27, and November
21 7, 2011. Thereafter, the matter was taken under submission.

22 On December 7, 2011, a status conference was held and thereafter several additional
23 pleadings were submitted with respect to the status of compliance as well as potential
24 receivers. The Court received a declaration from Sunny Acres' architect and heard additional
25 argument from both sides. On December 16, 2011, Sunny Acres submitted an additional
26 declaration and memorandum regarding its ongoing steps toward compliance.

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1 *Discussion*

2 The evidence received during the compliance hearings demonstrates that, both before
3 and after the Court of Appeal decision, the County made significant efforts to assist Sunny
4 Acres in complying with the Injunction and avoiding the necessity of a receiver. For
5 example, the County accepted multiple permit applications without requiring payment. On
6 August 16, 2011, the Board voted to defer over \$20,000 in building fees for Sunny Acres'
7 planned 14-bedroom residential dormitory, conditioned upon their curing the remaining Code
8 violations on the property.⁴

9 The County has also been proactive in responding to Sunny Acres' plan submissions,
10 which have been consistently deficient. For example, on July 22, 2011, Sunny Acres
11 submitted inadequate permit applications for the stucco barn, dairy barn, and accessory shed
12 ("the unpermitted structures"). On July 29, 2001, the County followed up with a letter
13 explaining the needed corrections and how to cure the deficiencies.

14 On September 1, 2011, County building officials personally met with De Vault and his
15 architect, Tom Brajkovich, to explain, in detail, what was lacking and what was required.
16 Brajkovich indicated that he understood the County's criteria and what needed to be done.

17 Despite these efforts, Sunny Acres submitted no additional applications between July
18 29th and September 12th. The applications submitted on September 12, 2011, contained no
19 material difference from the July 22nd applications.⁵ Further, Sunny Acres' representatives
20 remained insistent that they did not understand what was required of them. Aside from being
21 sluggish as to existing problems, Sunny Acres performed new and unauthorized work at the
22 site, none of which was directed toward comprehensive demolition.⁶

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25 ⁴ Sunny Acres continues to submit permit applications with fee waiver forms instead of payment,
knowing it could take months to obtain fee waivers from the Board, causing still further delay.

26 ⁵ While the October 6, 2011 permit applications showed some improvement, a wide range of issues
27 pertaining to floor plans, structural support, as well as electrical, plumbing, and septic systems
must still be addressed.

28 ⁶ The County has also demonstrated flexibility, by indicating that it might allow Defendants to keep
the attic in the stucco barn (even though its existence does not technically conform to ag exempt

1 With respect to Sunny Acres' conduct, the Court recognizes that some of the health
2 and safety issues at Sunny Acres have now been remedied, at least temporarily. Sunny Acres
3 currently provides clean (bottled) drinking water from an off-site source. Hazardous wastes
4 have been taken off-site, and, at last, all persons and most living accessories have been
5 removed from the unpermitted structures. From the pleadings submitted on December 16,
6 2011, it also appears that additional meetings have taken place, certain permit fees have been
7 paid, and additional repairs undertaken. Yet, the *timing* of Sunny Acres' compliance is quite
8 revealing.

9 On August 25, 2011, at the first compliance hearing following the appeal, the County
10 produced convincing proof that: 1) people were still residing on the site in outdoor (and
11 probably indoor) areas subject to the Injunction; 2) the unpermitted structures were, at the
12 very least, still being used (providing food, clothing, and bathing facilities) to support the
13 people living outdoors; 3) Sunny Acres had yet to cure the well contamination; and, 4) Sunny
14 Acres had yet to provide a safe drinking water source. Sunny Acres also had erected
15 additional unpermitted structures, had left code-violating electrical connections attached to
16 the RVs, and still had refrigerators and personal effects in the sheds.

17 In other words, between June 7th (the date of the Court of Appeal ruling) and August
18 25th (the first compliance hearing), Sunny Acres failed to meet four out of the five deadlines
19 in the revised Injunction schedule. Only after the Court openly expressed exasperation at the
20 speed of compliance were the unpermitted structures truly vacated (on August 28, 2011,
21 more than three weeks past the deadline), and other corrective measures undertaken.

22 Sunny Acres then missed the October 7th deadline to demolish or restore these
23 structures to ag-exempt status. To this day, Sunny Acres continues to store mattresses, food,
24 and personal items in the unpermitted structures, giving County inspectors the justifiable
25 impression that persons are still inhabiting them or living nearby. And, Sunny Acres has still

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27 status) and by classifying the so-called "mezzanine" above the barn as something other than a full
28 second story under the Building Code.

1 not complied with Injunctive provisions 6, 8, and 10, pertaining to the stucco barn, the dairy
2 barn, and the accessory shed.

3 The status hearing on December 7, 2011, provides another example of the halfhearted
4 speed of compliance. On November 10, 2011, a meeting was held between Sunny Acres'
5 architect and County representatives, yet it was not until December 5, 2011 at 4:30 p.m., that
6 Sunny Acres submitted its latest revised permit applications. A review of these revised
7 applications shows that many unresolved issues still remained.

8 The Court has authority to appoint a receiver to enforce a judgment, such as the
9 Injunction, pursuant to California Code of Civil Procedure §564(b)(3). (*See Gold v. Gold*
10 *Realty Co.* (2003) 114 Cal.App.4th 791, 804.) Moreover, the Court has express authority to
11 appoint a receiver to abate a public nuisance pursuant to California Health and Safety Code
12 §17980.7, *et seq.* (*See City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905, 920.)

13 It must be plainly stated that Sunny Acres has found fault with the County at every
14 turn. Yet, Sunny Acres took no action during the ten-month appeal hiatus to prepare for the
15 possibility that it might lose its appeal. Once the appeal was decided against Sunny Acres,
16 rather than speedily correcting the problems in light of the looming Injunction deadlines,
17 representatives of Sunny Acres chose to quarrel about the behavior of County officials and
18 the meaning of "ag-exempt status," an issue that was never raised either before or during the
19 appellate process.⁷

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23 ⁷ Sunny Acres insists that the dairy barn and certain garages are either nonconforming buildings or
24 once housed nonconforming uses that preempt the Injunction and excuse the need for ag exempt
25 permits or demolition. It claims that these structures were built in the 1950s and are therefore
26 "grandfathered." This argument is unpersuasive for several reasons. The law of the case
27 precludes Sunny Acres from challenging the Court's findings that the stucco barn, dairy barn, and
28 accessory shed are in code-violating conditions and constitute a nuisance, and must be returned to
ag-exempt status or demolished. (*People v. Murtishaw* (2011) 51 Cal.4th 574, 589; see 9 Witkin,
Cal. Proc. (5th ed. 2008) Appeal, §459, p.515.) Further, Sunny Acres waived this issue when it
failed to raise the issue during its appeal. (*See Tiernan v. Trustees of Cal. State Univ. & Coll.*
(1982) 33 Cal.3d 211, 216 fn. 4.) Equally significant, the Injunction speaks in the disjunctive by
requiring either the permitting or demolition of the offending structures. Nonconforming
structures would still need to be demolished.

1 Equally problematic, Sunny Acres has undertaken partial demolitions and other
2 unauthorized work. If obtaining ag-exempt permits was truly cost prohibitive, Sunny Acres
3 could instead easily and swiftly obtain over-the-counter permits to demolish the three
4 offending, *as required by the Injunction*. Instead, as in *Gold*, each tiny step forward has been
5 followed by two large steps sideways or backwards. (*Gold*, 114 Cal.App.4th at 800-801.)

6 Although Sunny Acres claims there is no longer any health and safety emergency,
7 this argument is meritless. The best way to gauge the future is by examining past history.
8 Given what has transpired so far, the Court can reasonably expect that illegal human
9 habitation will recur once the County inspections cease and the Court directs its attention to
10 other pressing matters. Neither the County nor the Court can spend limitless time and
11 taxpayer money making sure Sunny Acres continues to abide the law.

12 Moreover, the remedial action undertaken so far is fleeting. Using cases of bottled
13 water does not present a meaningful or realistic solution to the problem of contaminated
14 drinking water at Sunny Acres. Although people are not, at the moment, camped in or near
15 the unpermitted structures, this situation could recur at a moment's notice. Little has yet
16 been done to remedy the serious electrical and septic problems. Many of the underlying
17 problems persist and irreparable harm to the public is presumed from these ongoing
18 violations. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 70.)

19 Although appointment of a receiver is an extraordinary step, no other reasonable or
20 useful solution has been proposed. The alternate course of action proposed by Sunny Acres,
21 appointment of a Special Master to referee the permitting process, would result in more foot-
22 dragging and delay. Debate and intransigence would continue to rule the day.

23 In its latest submission dated December 16, 2011, Sunny Acres takes the position that
24 "[g]iven the nearly completed demolition repairs, there is no point in appointment of a
25 receiver, as there is nothing significant to implement or supervise." If, indeed, the receiver
26 discovers that little remains to be done on the property, the Court certainly has the power to
27 terminate the receivership at an early opportunity. This remains to be seen.

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Conclusion

The Court is painfully aware of the pressing issue of homelessness in San Luis Obispo County, particularly for individuals recovering from addiction. Every night, right in the midst of our community, are between 2,500 and 4,000 homeless people.⁸ When, as in recent weeks, the temperature plummets to near or below freezing, the suffering no doubt increases. It is disturbing that vulnerable people are caught in the middle of stubborn intransigence.

Yet it is simply wrong to say that *any* housing is better than *no* housing. Such reasoning would fill our communities with slum housing and tenements. The Court cannot countenance a shelter that is unsafe or that demonstrates a blatant disregard for the health and safety of its residents.

It is long past the time to comply with the Injunction, to split hairs over the meaning of words or to debate what it may take to cure the multiple deficiencies. Having listened to the evidence and assessed the credibility of witnesses, it has become clear that nothing short of removing operational control from Sunny Acres will remedy the ongoing violations and gain full compliance within a reasonable period of time. Sunny Acres cannot be trusted to comply with the Injunction on its own. The County's motion is granted.

In order to minimize costs, the Court authorized and received post-hearing correspondence from the parties with respect to the qualifications of candidates other than the receiver originally proposed by the County. However, David Pasternak's extensive experience with Health & Safety Code receiverships makes him the most capable and qualified person for appointment.

Pasternak maintains ongoing relationships with financial institutions and qualified contractors that will expedite the process of arranging financing and rehabilitating the property. His blended \$200 per hour rate is reasonable. Furthermore, the Court will closely monitor compliance activities to ensure that costs are kept within the reasonable range.

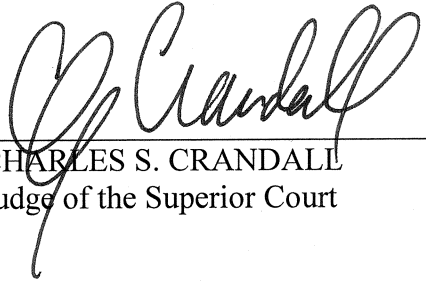
⁸ According to the Community Action Partnership of San Luis Obispo County, Inc. website, there are approximately 43,000 persons without homes across numerous central and southern California counties.

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Accordingly, the Court appoints David Pasternak as Receiver. His duties are circumscribed by the accompanying Order filed herewith.

Pursuant to California Health and Safety Code §17980.7(c)(11), the County is the prevailing party and entitled to its reasonable attorneys' fees and court costs.

Dated: January 20, 2012



CHARLES S. CRANDALL
Judge of the Superior Court

CSC:jn