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2 ASSISTANT PRESIDING JUDGE
3 OF THE SUPERIOR COURT
4 OF CALIFORNIA, COUNTY OF SONOMA
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

MAR 1 - 2010

By *C. Nielsen*
Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SONOMA

11 HOWARD HERMAN, et al.,

12 Plaintiffs,

13 v.

14 ALEXANDER ANOLIK, et al.,

15 Defendants.

Case No.: SCV-240423

STATEMENT OF DECISION

16
17 I.
18 Procedural History

19
20 Howard Herman (hereinafter referred to as "Herman") filed his original complaint
21 March 27, 2007, in SCV-240423 alleging causes of action for unfair competition, unjust
22 enrichment-road, and nuisance. Alexander Anolik (hereinafter referred to as "Anolik")
23 filed a first amended cross-complaint on August 30, 2007 alleging twelve causes of
24 action, including one for declaratory relief-road. Prior to trial the court granted summary
25 judgment to Herman on all causes of action in the Anolik cross-complaint other than the
26 declaratory relief cause of action. On August 1, 2008, Herman filed a second complaint
27 alleging causes of action for slander and interference with business relationships
28

1 (Business & Professions Code §17200, et sec.). The two complaints were consolidated
2 for trial.

3
4 II.

5 Decision

6
7 A. Herman's Cause of Action for Unjust Enrichment-Road/Anolik's Cross-Complaint for
8 Declaratory Relief-Road.

9 The evidence established that Herman contributed a total of \$287,923. to
10 construction and maintenance of the improved road from Lakeville Highway to the
11 Herman and Anolik properties. This road also serves a number of other properties.

12 The total spent by Herman can be broken down as follows:

| | | | |
|----|------|-----------|---|
| 13 | | | |
| 14 | 2008 | \$123,000 | Original cost of construction |
| 15 | | 39,000 | Repairs effectuated by Mr. Herman |
| 16 | | 40,000 | Repairs done by Mr. March and paid for by Mr. Herman |
| 17 | | <hr/> | Total ¹ |
| 18 | | \$287,923 | |

19 In allocating the costs set forth above between Anolik and Herman, the court has
20 considered the following factors:

- 21 1. The acreage of all properties served by the road.
- 22 2. The distance along the road utilized by each property gaining access from the
23 road.
- 24 3. The intensity of the use of the road by each property gaining access along the
25 road.

26 By applying these factors, the court has given primary emphasis to the length of
27

28

¹ In Herman's motion for summary judgment, the court granted judgment to Herman as to any amounts that Anolik claimed that he contributed to the construction or maintenance of the road.

1 the road utilized by each property and the intensity of use by that property. In arriving at
2 its allocations, the court makes the following findings:

3 1. Hertzog's property fronts the road but uses the road infrequently because
4 the main access for that property is directly from Lakeville Highway. Domaine
5 Chandon accesses its property from the road but utilizes only a short portion
6 of it. Northbay Construction utilizes much more of the road and makes
7 substantial use of the road for its equipment. Berg, Crane, San Giacomo and
8 Hertzog uses a large portion of the road but their impact on the road is minor
9 because of infrequent use.

10 2. The major user of the road is Herman for construction and daily use of his
11 horse boarding and training facility and for horse shows.

12 3. Anolik's burden on the roadway is far less than Herman's. Although his
13 property is situated at the end of the road, the traffic that his property
14 generates is far less than that generated by Herman.

15 The properties are allocated the following percentages of responsibility for the
16 road:

| | | |
|----|-------------------------|-----|
| 17 | Northbay | 5% |
| 18 | Domain Chandon, Hertzog | |
| 19 | San Giacomo, Crane | 5% |
| 20 | Herman | 65% |
| 21 | Anolik | 25% |

22
23 Based on the above, Anolik must reimburse Herman for construction and
24 maintenance of the road in the amount of \$71,980.

25
26 **B. Unfair Business Competition**

27 Herman's theory of unfair competition is that Anolik's illegal uses on his property
28 allowed him to lure boarders and trainers who would otherwise utilize Herman's

1 facilities. Herman's expert, Mr. Henry opined that 46-50% of Anolik's tenants would
2 have boarded at Riverside.

3 This opinion is not supported by the evidence. Substantially all of Anolik's
4 tenants had been residents at Riverside and left because they were asked to leave.
5 They then found a place to board their horses on Anolik's property. Herman operates a
6 large scale, first class, horse training facility. His business has in no way reduced or
7 impaired by the few boarders and tenants on Anolik's property. Court renders judgment
8 for Anolik on this cause of action.
9

10 Herman has shown no harm suffered because of these residential or commercial
11 uses on the Anolik property. Korea Supply Company v Lockheed Martin Corp. 29
12 Cal.4th 1134, 1150-1151 (2003).
13

14 C. Nuisance

15 Anolik allows several nuisances to exist on his property. First, there is the firing
16 range which has not been permitted by the County of Sonoma. This is a public
17 nuisance. It is maintained in violation of County zoning regulations and thus is a
18 nuisance per se. Sonoma County Code, section 24-33. The noise of gunfire creates a
19 nuisance to the public generally and disturbs Mr. Herman's use of his property. Mr.
20 Herman has suffered private injury because the noise of the fire range disturbs the
21 horses that are being trained or ridden on his property.
22

23 The second public nuisance on Anolik's property is the illegal septic system,
24 which is maintained in direct violation of the County designation of Anolik's property as
25 a flood zone subject to inundation and recorded restrictions on use of the property. The
26 septic system also constitutes a private nuisance; it creates a health hazard for Mr.
27 Herman and other adjoining land owners because in flood situations the septic tanks will
28 be under water and release their contents to the adjoining properties.

1 The court enjoins the firing range use on Anolik's property and orders Anolik to
2 immediately cease and desist this use and from allowing others to use the firing range
3 until such time that he attains approval of the range from the County of Sonoma.

4 The Court further enjoins the residential uses on the Anolik property and prohibits
5 Anolik from allowing new tenants to occupy the structures on the premises whether they
6 be residential tenants in the housing which has been constructed or persons seeking to
7 board horses in the stables which have been built by Anolik.

8 As to existing tenants, Mr. Anolik is ordered to immediately apply for permits to
9 legalize the residential uses and boarding of horses, to complete that application within
10 60 days and to obtain permits for those uses within 18 months. If such permits are not
11 obtained, Anolik is ordered to desist from all residential uses, to remove bathroom and
12 kitchen facilities from the structures on the property and to terminate the boarding of
13 horses on the property.

14
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16 D. Defamation

17 In his original complaint dated August 1, 2008, Herman characterizes his cause
18 of action for defamation as slander. In fact, the evidence produced at trial established a
19 cause of action for libel. The court will allow amendment of the complaint on its face to
20 allege libel.

21 The court finds that statements made in two separate letters, one to Giant Steps
22 and the other to the County of Sonoma to be libelous. Specifically, the statement in
23 each of the letters that Mr. Herman is harboring illegal aliens on his property, that he
24 has them on the payroll and he is lying about their legal status are untrue and accuse
25 Herman of criminal acts.
26
27
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1 The allegation in Anolik's letters that Mr. Herman allows cock fights on his
2 property is not libelous. The weight of the evidence established that cock fighting has
3 taken place on Herman's property.

4 The defamatory nature of Anolik's letters are facially evident. The statements
5 made in these letters constitute libel per se. Thus they support an award of general
6 damages even if special damages are not proven. Dun and Bradstreet, Inc. v.
7 Greenmoss Builders (1985) 472 U.S. 749, 760

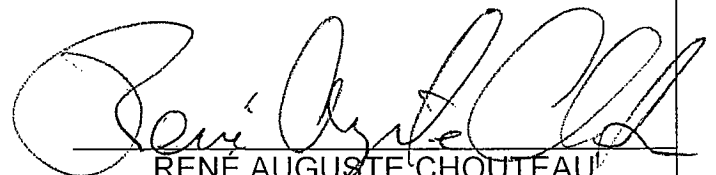
8
9 Herman did not prove special damages. The Court awards general damages to
10 Mr. Herman as compensation for Anolik's libel in the amount of \$10,000.

11 E. Attorneys Fees

12 The court awards attorneys fees on the nuisance cause of action pursuant to
13 Sonoma County Code section 1-702. The court does not award attorneys fees under
14 C.C. P. §1021.5. Costs are awarded to Herman.

15 Dated:

FEB 26 2010

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19 RENE AUGUSTE CHOUTEAU
20 Assistant Presiding Judge of the
21 Sonoma County Superior Court
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