

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 IN THE NORTHERN DISTRICT OF CALIFORNIA

3
4 MICHAEL TOSCHI AND TRACY
5 TOSCHI,

6 Plaintiff(s),

7 VS.

No. C-07-3625 MMC

8 COUNTY OF SAN MATEO, DON
9 DALLIMONTI, RHONDA
10 DALLIMONTI, NEIL CULLEN,
BRIAN LEE, DAVID WEIDNER, and
DOES 1 through 50, inclusive,

**CERTIFIED
COPY**

11 Defendant(s).
12 _____/

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14
15 DEPOSITION OF MICHAEL TOSCHI

16 Thursday, March 20, 2008

17 Pages 1 - 175

18 Reported by: R. Chayo Ayon, CSR # 12372

19
20 **The original of this deposition
21 is in our office for signature
22 and will be sealed in 35 days
unless otherwise notified.**

23 UCCELLI & ASSOCIATES
24 Certified Shorthand Reporters
1243 Mission Road
25 South San Francisco, California 94080
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DEPOSITION OF MICHAEL TOSCHI

1 Q. Isn't it true that Mark Marelich had
2 discussed with you the possibility of putting a whistle
3 at that gap that we've been talking about situated
4 where the sandbags are in Exhibit B with an overland
5 pipe from that whistle down to the inlet pipe at the
6 bottom of the slope?

7 A. He may have, yes.

8 Q. Did you obtain a permit to do just that?

9 A. No.

10 Q. Why not?

11 A. Why would I?

12 Q. What do you mean why would you?

13 A. He didn't ask me to get a permit to do that.
14 I didn't do it. So I didn't need a permit.

15 Q. Did you ask that it be done?

16 A. No.

17 Q. Did you agree to do it?

18 A. No.

19 Q. Remember that you are under oath. This is
20 under penalty of perjury, and this is serious, and I'm
21 asking you for the truth, and I want you to tell the
22 truth.

23 So did you agree in April of 2006 to install
24 a pipe and a whistle down the slope of your property?

25 MR. GEARINGER: I'm going to object that that

DEPOSITION OF MICHAEL TOSCHI

1 question has been asked and answered.

2 You may answer it again.

3 THE WITNESS: No. I did not agree to do that
4 nor did I get a permit to do that.

5 BY MR. SWOPE:

6 Q. Okay. Mr. Toschi, I want to direct you to
7 your description or definition of a berm, which is a
8 mound of dirt that would be elevated.

9 Do you remember that definition that you gave
10 me?

11 A. Yes.

12 Q. Did you, at any time during the summer of
13 2006, construct a mound of dirt that was elevated for
14 the entire rearward property line on your property
15 situated at 2511 Park Road?

16 A. I added dirt to restore the roadway, the edge
17 of the roadway, on top of the existing dirt that had
18 been eroding away and falling down the hill and being
19 pushed down the hill by vehicles.

20 Q. Did you put concrete pieces in that mound of
21 dirt?

22 A. There were some in there. And the reason
23 they were in there is because, where I got the dirt
24 from, which was from a neighbor who was doing
25 construction, he used a tractor and lifted it up and

1 A. I don't recall this one, but I do recall the
2 one that I was talking about.

3 Q. On this document, "Notice to Remove
4 Encroachment," dated July 5, 2006 -- and down in the
5 lower-hand corner it says, "County of San Mateo
6 Document 021" -- it says that there's a structure in
7 the right-of-way without permit. And the improper
8 placement of structures is within the restricted area,
9 constituting a dirt and concrete berm.

10 Do you see that on the document?

11 A. I see that.

12 Q. Did you obtain a permit before putting that
13 dirt berm along your property line in the public
14 right-of-way in the summer of 2006?

15 A. Can you show me a picture of the berm that
16 you are referring to?

17 MR. GEARINGER: Just answer the question as
18 best as you can.

19 BY MR. SWOPE:

20 Q. Did you get a permit to install the berm in
21 the public right-of-way in the summer of 2006? Yes or
22 no?

23 A. I did not get a permit to restore the
24 hillside.

25 Q. I didn't ask you that question.

DEPOSITION OF MICHAEL TOSCHI

1 A. Okay.

2 Q. Did you obtain a permit to install the
3 elevated dirt berm in the summer of 2006? Yes or no?

4 A. I did not get a permit.

5 Q. Okay. Thank you.

6 MR. SWOPE: This will be
7 Defendants' Exhibit D.

8 (Defendants' Exhibit D was marked for
9 identification.)

10 BY MR. SWOPE:

11 Q. Mr. Toschi, I show you what's been previously
12 marked as Defendants' Exhibit D. Do you recognize that
13 document?

14 A. Yes.

15 Q. What is it?

16 A. It's a notice to remove an encroachment on
17 the public right-of-way at Park Road.

18 Q. Is it dated July 26, 2006?

19 A. Yes.

20 Q. Okay. And who authored that letter?

21 A. Lisa.

22 Q. Lisa who?

23 A. Lisa A. Ekers.

24 Q. It mentions an encroachment that you had that
25 was not permitted in a public right-of-way; is that

1 I, R. CHAYO AYON, duly authorized to
2 administer oaths pursuant to Section 2093(b) of the
3 California Code of Civil Procedure, do hereby certify
4 that the witness in the foregoing deposition was by me
5 duly sworn to testify the truth in the within-entitled
6 cause; that said deposition was taken at the time and
7 place therein cited; that testimony of said witness was
8 reported by me and thereafter transcribed under my
9 direction into typewriting; that the foregoing is a
10 complete and accurate record of said testimony; and
11 that the witness was given an opportunity to read and
12 correct said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed himself/herself of the opportunity to sign or
16 the signature has been waived.

17 I further certify that I am not of counsel
18 nor attorney for any of the parties in the foregoing
19 deposition and caption named nor in any way interested
20 in the outcome of the cause named in said caption.

21 DATED: 3/27/08

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R. CHAYO AYON
CERTIFIED SHORTHAND REPORTER NO. 12372