

# COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION:  COUNTY  MONTECITO

RE: Project Title Lacerte Appeal of Bmo, LLC ADU

Case No. Z1 APL-00000-00029 and Z1 CDP-00000-00053

Date of Action December 8, 2021

I hereby appeal the  approval  approval w/conditions  denial of the:

Board of Architectural Review – Which Board? \_\_\_\_\_

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? COUNTY

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

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COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

*SEE ATTACHED.*

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**Specific conditions imposed which I wish to appeal are (if applicable):**

a. *SEE ATTACHED.*

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

BERG LAW GROUP Eric Berg 12/14/21
Print name and sign - Firm Date

ERIC BERG Eric Berg 12/14/21
Print name and sign - Preparer of this form Date

Dominique Lacerte Dominique R Lacerte 12/13/2021
Print name and sign - Applicant Date

ERIC BERG Eric Berg 12/14/21
Print name and sign - Agent Date

Dominique Lacerte Dominique R Lacerte 12/13/2021
Print name and sign - Landowner Date

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December 15, 2021

County of Santa Barbara Board of Supervisors  
Clerk of the Board  
105 East Anapamu Street  
Santa Barbara, California 93101

Re: Lacerte Appeal of BMO, LLC ADU  
Case Nos. 21 APL-00000-0029 and 21 CDP-00000-00053  
APN No. 005-230-008  
Date Action Taken: December 8, 2021

Members of the Board and Staff:

The undersigned is counsel of Appellant Lacerte Family Trust. ("Lacerte"). Lacerte appeals from the County of Santa Barbara Planning Commission's ("Commission") December 8, 2021 denial of the Lacerte's appeal of the ADU Application of BMO, LLC.

### **Introduction**

On December 8, 2021, the Commission voted 3-2 to deny the Lacerte's appeal of the ADU Application of BMO, LLC.

At issue appears to be the ability to make the required findings specifically that the project is in compliance with Section 35-60.5 of the Article II Coastal Zoning Ordinance that there is adequate public/private service and resources (I.e. water, sewer, roads, etc.) available to serve the proposed development. The Lacertes feel that there is inadequate access to the Mecay site to make that finding. Facts submitted to the Planning Commission indicate that the access easement is insufficient for the parking demand created by the existing development at its ability to maintain the easement open and available for emergency access and therefore the site has no ability to handle additional demand. The easement is not just about providing access to the home for parking but it also provides the necessary emergency access for medical and fire.

The Lacertes disagree that the fact the ADU does not need to provide required parking nullifies the county's responsibility to ensure that adequate access is provided to serve the basic safety access for both the Lacerte's property and the Mecay's property. The proposed porch to be developed into the area currently devoted to circulation/turnaround is just another example of diminishing private services to the site.

Among those Commissioners in the majority at the December 8<sup>th</sup> Hearing, one commented that this was a “very difficult site with all kinds of planning issues.”

Among those Commissioners who voted to grant the appeal, one commented that there were inadequate services for the Project, and that this is not the type of property that can have an ADU, and that this is about transportation and parking. Another Commissioner commented that there were “obvious” and “huge” traffic issues, and that the site was not well-suited for an ADU.

This same Commissioner succinctly summarized the Lacerte’s main objection to the Project:

**“Just because you can does not mean you should.”**

The Commission’s “hands were not tied.” There existed an adequate basis in the record before it to support the granting of the appeal. The Lacertes believe that actual errors were made by the Commission, and respectfully requests that Board grant its appeal.

### **Summary of Issues**

The Board and Staff have the complete file presented to the Commission. The Lacertes wish to highlight several points.

This is not a situation where one neighbor simply wants to object to anything his neighbor presents to the Commission. Something could potentially work here. Some compromise could be achieved. But it is not this project.

#### **1. Finney Street and Parking**

Many of you are familiar with Finney Street in Summerland. A video that will be presented at the Hearing highlights several serious issues. First is the obvious narrowness of the street. Parking availability on the street is significantly limited.

Finney Street is the epitome of a Special Problems Area. Summerland is already generally designated as such, but drilling down even further, Finney Street is a problem area within a problem area. As the Board is aware, access road width is one of the defining features of a special problems area—and here you are.

At the end of Finney Street is the Lacerte home. It is here that the Street dead ends, and makes a dramatic 90 degree left turn—and becomes a dedicated ingress/egress easement. This is not a parking easement. BMO LLC has used it as parking easement since they owned the home. BMO LLC claimed they had a prescriptive right to park an additional 2-3 vehicles any time they wanted. The impact became so intrusive upon the Lacerates that they filed a court case to stop that.

Attached is a copy of the Court Judgment in that case. Judge Geck recently ruled, pursuant to Bench Trial, that BMO LLC has no parking rights in this easement. Judge Geck further ruled that this easement is a Fire Apparatus Access Road. As such, it must remain clear at all times and

free of parking, with the exception of very short transitory stops for delivery and service calls to both homes.

This is a situation where parking has been **taken away from the applicant by way of court order** in advance of their seeking approval for this ADU unit. A new housing unit on this lot in the form of the ADU application increases parking demand.

When asked about the effect of this Judgment on its Application, BMO LLC advised the Commission that the Judgment “has been appealed.” The implication of that statement was that the Judgment somehow has no binding effect upon consideration of this appeal. What BMO LLC failed to share with the Commission is that there is no automatic stay in appeals involving self-executing judgments or orders and in appeals from judgments or orders granting a prohibitory injunction. Rather, an appellant must obtain a discretionary stay from the trial court or a writ of supersedeas from the appellate court.

A judgment or order granting a prohibitory injunction (restraining specified conduct) is “self-executing” in that it acts directly upon the defendant and requires no enforcement proceedings that could be stayed. Thus, defendant-appellant *must* comply with the injunction *unless a writ of supersedeas or stay order* is obtained from the appellate court. *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 C3d 696, 709; *Food & Grocery Bureau of So. Calif. v. Garfield* (1941) 18 C2d 174, 176-177; *Wolf v. Gall* (1916) 174 C 140, 142 (“By a line of decisions beginning with the early history of the state, the rule has been settled that an appeal does not stay the force of a prohibitive injunction, and that the lower court has full power to punish a violation of such injunction pending the appeal.”). Rutter Practice Guide, Cal. Prac. Guide Civ. App. & Writs, Section 7:264.

In sum, a prohibitory injunction remains in effect despite the taking of an appeal, and the appellant may be held in contempt for disobeying it. See *Ohaver v. Fenech* (1928) 206 C. 118, 122; *Joerger v. Mt. Shasta Power Corp.* (1932) 214 C. 630, 637; *Dry Cleaners & Dyers Institute of San Francisco & Bay Counties v. Reiss* (1936) 5 C.2d 306, 308; *Agricultural Lab. Rel. Bd. v. Tex-Cal Land Management* (1987) 43 C.3d 696, 709; 6 Witkin, Cal. Proc. 6th Prov Rem § 385 (2021).

Additionally, Code of Civil Procedure § 917.8 provides that perfecting an appeal does not stay proceedings if a judgment or order “directs the closing or discontinuance of any specific use of the building or place for any period of time.”

Here, the ‘no-parking’ order is a prohibitory injunction in that it restrains specific conduct, i.e., parking in the easement. As a prohibitory injunction, the no-parking order remains in effect and is enforceable during the pendency of appeal.

BMO LLC has not sought a discretionary stay from the trial court of this Judgment. The Judgment is currently binding upon it regardless of the Appeal.

The parking that the Applicant has shown on its proposed Plans still shows a parking area that goes into circulation area/prohibited parking easement space. The space to circulate in and out

of the BMO LLC driveway are extremely restricted. The Parking is still contributing to fire suppression and fire emergency issues.

An additional video will be shown at the Hearing showing how existing parking is currently being addressed at Applicant's home. This video was shot just recently, after Judge Geck's Judgment. This video demonstrates the applicant attempting to deal with the new reality of not being able to park its cars in the easement. The Lacertes respectfully ask the Board to draw its own conclusions about what parking looks like now, even before consideration of an ADU.

One of themes of the Lacerte/BMO court case advanced by BMO was, "it's too hard for us to back out. It's too hard for us to navigate the turn from our home onto Finney if we can't park in the easement. We are in big trouble if cannot have this parking." All of these arguments rejected by Judge Geck. And now, the Board is being asked to approve an additional 750 square feet heaped upon an already overburdened parcel that the applicant is having a hard time with parking in its present state.

This is not a cookie cutter street. This is not a cookie cutter lot. This is a parcel where half of the parking historically relied upon has been eliminated via court order.

## **2. The Parcel is heavily marketed as a vacation rental.**

Attached is the printout of the link that the Applicant uses to market its property as a vacation rental. The link can be found at <https://www.miramarlane.com/properties/the-beach-cottage>

The applicant advised the Commission at the December 8<sup>th</sup> Hearing that the Parcel was largely used by Mr. and Mrs Mecay themselves, personally. What the applicant failed to mention was that BMO LLC is a Nevada corporation, and Mr. Mecay, its principal, claims legal residency in the State of Nevada. The Lacertes have multiple videos shot from their security camera showing multiple vacation renters staying at the property.

Simply put, this Applicant wants to add to its vacation rental options. The ADU request appears to be nothing more than largely an economic play to get more vacation people, and therefore generate more income.

The Lacertes ask the Board to consider how these anonymous renters are going to abide by the court judgment not to park in the easement. The Board's approval will hasten and increase the likelihood of violations of the Court order and regular enforcement visits by the Sheriff—precisely the types of things that no one in this neighborhood wants.

The Lacertes are going to have a challenging enough time getting the Applicant to comply with this Court Order, let alone an endless stream of strangers who don't know about this issue and, frankly, won't care.

If an overriding goal of the ADU process is to promote an affordable housing policy, this project is inconsistent with that. Again, the Lacertes are not objecting just to object. Something could in theory meet with their approval. It would involve a smaller project than the 795 square feet currently proposed.

BMO LLC will certainly maximize its vacation rental income by having an ADU approved that is complete with bedroom, kitchen, rec area, new front porch, deck—all of the features currently called out for in the pending project.

But is that appropriate? This is not an efficiency unit; an efficiency would mean less traffic, and less parking. That is something the Lacertes could in theory accept; an ADU that accommodates a person, not a vacation family.

### **3. Existing Permit Violations**

According to Santa Barbara County records the existing single-family dwelling was constructed in 1949 at approximately 1,000 square feet. Notably, the County Assessor's Office taxes this dwelling at only 1,054 square feet. At some time without benefit of permits the unit was expanded to over 1600 square feet.

Santa Barbara County has provided records that indicate that the County was aware of the expansion of the unit including the fact that it was expanded over property lines. The remedy to this situation included a General Plan Amendment, rezone, Lot line adjustment which was approved in 2005. Conditions of this Coastal Development Permit specifically required the applicant to obtain building permits for the expansion of the unit. Before the lot line adjustment, building permits could not be obtained because the house was expanded on county land. The lot line adjustment was needed to clear the way for building permits to be obtained. In other words it created a legal lot wholly owned by the Mecays.

To date, no building permits have been issued for the expansion or other work to the property (PRA request). In fact, the record shows that the County acknowledged that permits would be needed and the fact that have never been obtained is a safety issue. A review of historic aerials and statements made by the owners of the work done on the project by the Mecays indicates that work without benefit of permits has been done during the ownership by the Mecays.

Building permits are required to ensure that work done on property is safe for both the property owner and those surrounding the properties. No evidence has been provided into the record that the work was done prior to the requirement for a permit. It fact evidence was submitted by the Appellant to the County showing evidence of the work done by the Mecays, and the County's response has been to say that the lot line adjustment corrected all violations. We believe that statement is not validated by code or any evidence provided into the record and maintain unresolved violations still exist and affect the properties ability to entitle the ADU.

The Planning Commission erred in concluding that all previous permit violations with respect to the Parcel had been abated by way of the Lot Line Adjustment. In so ruling, the Commission summarily concluded, without any citations to the permit history or property record, that all violations had somehow been "grandfathered in" by way of the Lot Line Adjustment. It is Applicant's burden to prove that all existing work on the home has been properly permitted, not Appellant's burden to disprove that fact.

**In fact, Commission Staff, during its presentation, acknowledged that "it is unclear when the additions were added."**



**Applicant has presented no evidence as to when all disputed additions were added relative to the date of the Lot Line Adjustment. Applicant has the burden to satisfy the ruling body that there are no existing violations associated with the Parcel.**

By way of just one example, you will see in the vacation rental advertisement a photograph depicting stairs cut into a bluff and leading to the beach. These stairs and this pathway are not permitted. If they were permitted, the footpath and stairs would have been delineated in permit history by way of the Lot Line Adjustment exhibits. There is no CDP associated with this footpath, and the County cannot approve the ADU or any permits, inclusive of demolition recently conducted during enforcement activity on the parcel this year. This will ultimately become a Coastal Commission issue if it is allowed to persist unabated. For purposes of this appeal, however, it is sufficient to point out that the Applicant is required to abate all existing violations before seeking obtaining approval for this project.

See also by way of example, 02CDH-00000-004, which has recorded conditions and is currently out of compliance with this permit. The permit conditions specifically conditioned that the project site shall not be allowed to disturb the ESH area. Split zoning was implemented to mark this area. A trail has been cut into this area in direct violation of this permit.

The approval findings found in 35-169.5.1.c cannot be made because at least one permit violation exists on the property, and there may be others. A recently graded and developed footpath, with stairs, has been installed on the parcel down the bluff top, into and through environmentally sensitive habitat, to the beach. No permit records exist for this development, which occurred approximately two years ago, and no exhibits exist which show this improvement as legal non-conforming. Therefore, the finding that the “subject property and development is in compliance with all laws,” cannot be made. Please see photographs presented by the Lacertes depicting the trail improvement, inclusive of stairways, vegetation removal and the installation of irrigation and drainpipes.

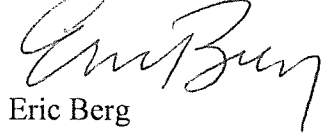
The Accessory Dwelling Unit (ADU) requested in based on the square footage that has never been permitted and therefore the size of the ADU is beyond that allowed under the code which is ½ of the legal square footage or 527 square feet.

The structure is not nonconforming as it was never expanded lawfully therefore the illegal portion of the dwelling does not exist lawfully, and it cannot therefore be relied upon to expand the allowable area for an ADU.

Thank you for your consideration.

Sincerely,

**BERG LAW GROUP**

A handwritten signature in black ink, appearing to read "Eric Berg", written over the printed name.

Eric Berg

Enclosures: (1) Court Judgment  
(2) Vacation Rental advertisement

EXHIBIT 1



PLAINTIFF/PETITIONER: Lacerte Survivor's Trust  
 DEFENDANT/RESPONDENT: BMO, LLC

CASE NUMBER:  
20CV01909

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

*(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)*

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):  
 3905 State Street, Suite 7-104  
 Santa Barbara, California 93105

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a.  deposited the sealed envelope with the United States Postal Service.  
 b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*): October 28, 2021  
 b. from (*city and state*): Santa Barbara, California

4. The envelope was addressed and mailed as follows:

- |  |   |
|--|---|
| <p>a. Name of person served:<br/>           Marc Allaria, Esq. LITCHFIELD CAVO LLP<br/>           Street address: 2 North Lake Avenue, Suite 400<br/>           City: Pasadena<br/>           State and zip code: California 91101</p> | <p>c. Name of person served:<br/>           Street address:<br/>           City:<br/>           State and zip code:</p> |
| <p>b. Name of person served:<br/>           Street address:<br/>           City:<br/>           State and zip code:</p>  | <p>d. Name of person served:<br/>           Street address:<br/>           City:<br/>           State and zip code:</p> |

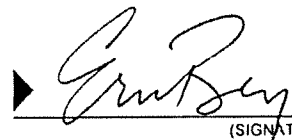
Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached: 17

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 28, 2021

Eric Berg  
 (TYPE OR PRINT NAME OF DECLARANT)

  
 (SIGNATURE OF DECLARANT)

Pursuant to CRC 2.259 this document has been electronically filed by the Superior Court of California, County of Santa Barbara, on 10/12/2021

1 **ERIC BERG** (State Bar No. 134621)  
2 **BERG LAW GROUP**  
3 3905 State Street, Suite 7-104  
4 Santa Barbara CA 93105  
5 Telephone: 805.682.9888  
6 Facsimile: 805.994.0110

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA  
**10/27/2021**  
Darrel E. Parker, Executive Officer  
BY Chavez, Terri Deputy Clerk

7 Attorneys for Plaintiffs/Cross-Defendants  
8 **ARTHUR JOSEPH LACERTE SURVIVOR'S**  
9 **TRUST DATED JULY 11, 2018,**  
10 **Arthur Joseph Lacerte and Dominique R. Lacerte,**  
11 **Cotrustees**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SANTA BARBARA

14 ARTHUR JOSEPH LACERTE  
15 SURVIVOR'S TRUST DATED JULY 11,  
16 2018, Arthur Joseph Lacerte and Dominique  
17 R. Lacerte, Cotrustees,

Case No. 20CV01909

~~PROPOSED~~ JUDGMENT

18 Plaintiff,

19 v.

20 BMO, LLC, a Limited Liability Company;  
21 Does 1 through 10, inclusive,

22 Defendants

23 BMO, LLC,

24 Cross-Complainant

25 v.

26 ARTHUR JOSEPH LACERTE  
27 SURVIVOR'S TRUST DATED JULY 11,  
28 2018, Arthur Joseph Lacerte and Dominique  
R. Lacerte, Cotrustees, and ROES 1-20,  
inclusive,

Cross-Defendants

BERG LAW GROUP  
3905 STATE STREET, SUITE 7-104  
SANTA BARBARA, CA 93105

1 This matter was heard in a Court Trial in Department Four of the Santa Barbara Superior  
2 Court before the Honorable Donna D. Geck, Judge of the Superior Court on September 13, 2021,  
3 and September 14, 2021. Plaintiff/Cross-Defendant Dominique Lacerte, as co-trustee of the Arthur  
4 Joseph Lacerte Survivor's Trust Dated July 11, 2018, was present at Trial and was represented by  
5 her attorney of record, Eric Berg of Berg Law Group. The managing member of Defendant/Cross  
6 Complainant BMO, LLC, Robert Mecay, was present at Trial and represented by BMO, LLC's  
7 attorney of record, Marc V. Allaria of Litchfield Cavo LLP.

8 **Judgment**

9 On October 7, 2021, the Court entered its Statement of Decision, which is incorporated by  
10 this reference as Exhibit 1 hereto. Now, therefore, in accordance with the Court's Statement of  
11 Decision

12 **IT IS ORDERED, ADJUDGED, AND DECREED** that:

13  
14 1. The Court hereby issues a Declaratory Judgment favor of Plaintiffs/Cross Defendants  
15 Arthur and Dominique Lacerte, as trustees of the Arthur Joseph Lacerte Survivor's Trust Dated July  
16 11, 2018, consistent with the terms set forth in the Statement of Decision, and declares as set forth  
17 herein:

18 A. Defendant/Cross-Complainant has no legal right to park its vehicles in the Access  
19 Easement, including the vehicles of its guests, invitees, employees, servants and agents;

20 B. Defendant/Cross-Complainant has no legal right to occupy or use the Access Easement  
21 other than for the express purposes of ingress, egress, and private underground utilities, as set forth  
22 in the grant deed recorded on September 29, 1989, as Instrument No. 89-064952;

23 C. Defendant/Cross-Complainant, and its agents, servants, employees, guests, and invitees  
24 have no legal right to use the Lacerte Private Driveway as a turnaround;

25 D. Plaintiffs/Cross-Defendants may retain the existing chain fence across their Private  
26 Driveway;

27 E. Plaintiffs/Cross-Defendants may retain the portion of the low rock retaining wall that is  
28 located on their Private Driveway;

1 F. Plaintiffs/Cross-Defendants shall replace the portion of the low rock retaining wall that is  
2 in the Access Easement with a railroad tie retaining wall, with the cost of the replacement to be  
3 borne by Plaintiffs/Cross-Defendants;

4 G. Plaintiffs/Cross-Defendants may retain the planter located alongside the eastern border of  
5 the Lacerte residence.

6 H. Both Plaintiffs/Cross-Defendants, and their agents, servants, employees, guests, and  
7 invitees and Defendant/Cross-Complainant and its agents, servants, employees, guests, and invitees are  
8 prohibited from parking on the Access Easement, with the following exceptions:

9 i. Said parking restriction shall not apply to brief, transitory and temporary idling of  
10 vehicles in the Access Easement for pickup and delivery services; and

11 ii. Said parking restriction shall not apply to brief, transitory and temporary idling of  
12 vehicles by Plaintiffs/Cross-Defendants and their guests, invitees, servants, employees, and agents  
13 for purposes of removing and re-hooking the chain fence across the Lacerte driveway.

14 l. BMO's prescriptive easement claim for parking in the Access Easement is denied;

15 J. BMO's prescriptive easement claim for using the Lacertes' Private Driveway as a  
16 turnaround is denied;

17 K. Plaintiffs/Cross-Defendants are awarded nominal damages in the amount of \$1 pursuant  
18 to Plaintiffs/Cross-Defendants' Second Cause of Action for Trespass;

19 L. Plaintiffs/Cross-Defendants are awarded costs in an amount to be determined by the  
20 Court post-trial after submission of a cost memorandum; and

21 M. Pursuant to Code of Civil Procedure § 664.6, this Court shall retain jurisdiction over the  
22 parties to enforce the terms this judgment.

23 DATED: October \_\_, 2021

24 **10/26/2021**



Judge, Superior Court

**Donna D. Geck**



EXHIBIT 1

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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA  
**10/07/2021**  
Darrel E. Parker, Executive Officer  
BY Temple, Kristi  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA**

ARTHUR JOSEPH LACERTE SURVIVOR'S) Case No.: 20CV01909  
TRUST DATED JULY 11, 2018, Arthur )  
Joseph Lacerte and Dominique R. Lacerte, ) **STATEMENT OF DECISION**  
Cotrustees )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BMO, LLC, a Limited Liability Company; and )  
Does 1 through 10, inclusive, )  
 )  
Defendants )  
 )  
\_\_\_\_\_  
BMO, LLC, )  
Cross-Complainant )  
 )  
vs. )  
 )  
ARTHUR JOSEPH LACERTE SURVIVOR'S) )  
TRUST DATED JULY 11, 2018, Arthur ) )  
Joseph Lacerte and Dominique R. Lacerte, ) )  
Cotrustees, and ROES 1-20, inclusive, ) )  
 ) )  
Cross-Defendants ) )  
 ) )  
 ) )  
 ) )  
 ) )

1 This matter was heard in a Court Trial in Department Four of the Santa Barbara Superior  
2 Court before the Honorable Donna D. Geck, Judge of the Superior Court on September 13, 2021,  
3 and September 14, 2021. Plaintiff/Cross-Defendant Dominique Lacerte, as co-trustee of the  
4 Arthur Joseph Lacerte Survivor's Trust Dated July 11, 2018, was present at Trial and was  
5 represented by her attorney of record, Eric Berg of Berg Law Group. The managing member of  
6 Defendant/Cross Complainant BMO, LLC, Robert Mecay, was present at Trial and represented  
7 by BMO, LLC's attorney of record, Marc V. Allaria of Litchfield Cavo LLP.

8 **I. Factual and Procedural Background**

9 The trial involves a real property dispute between neighboring property owners at the end  
10 of Finney Street, a private, dead-end street in Summerland, California. The trial addresses two  
11 primary issues: (1) whether Defendant/Cross-Complainant BMO, LLC ("BMO") had developed  
12 a prescriptive right to park on and obstruct an existing access easement on the Lacertes'  
13 property; and (2) whether BMO had developed a prescriptive right to use the Lacertes' private  
14 driveway ("Private Driveway") as a turnaround. The Lacertes sought a judicial determination  
15 that BMO has no legal right to park on or otherwise obstruct the access easement. The Lacertes  
16 further sought nominal damages for BMO's trespass upon their Private Driveway and a judicial  
17 determination that BMO has no legal right to use their Private Driveway as a turnaround. BMO  
18 contends that the Lacertes have interfered with BMO's use of the access easement by (1) parking  
19 in it, (2) hanging a chain fence across the Private Driveway, and (3) replacing a railroad tie  
20 retaining wall with a rock retaining wall at the northern end of the easement.

21 a. 2311 Finney Street – The Lacerte Property

22 The Lacertes are the owners of 2311 Finney Street, having acquired it in 2018 to use as a  
23 vacation home for Mr. Arthur Lacerte, an 80-year-old gentleman, and his children and  
24 grandchildren, including his two daughters Dominique and Bridgette Lacerte. The property is  
25 burdened by a deeded access easement that was recorded on September 29, 1989, some years  
26 after the construction of the residence, for "ingress, egress, and underground private utilities"  
27 over the easterly 18 feet of the property for the benefit of 2305 Finney Street (hereinafter, the  
28 "Access Easement"). (Trial Exhibit No. 002.)

1           b. 2305 Finney Street – The Mecay House

2           BMO, LLC is the owner of 2305 Finney Street. BMO acquired 2305 Finney Street on or  
3 around 1998. BMO is a Nevada Limited Liability Company. Mr. Robert Mecay, a Nevada  
4 resident, is the managing member of BMO. Mr. Mecay, and his wife Suzie Mecay, (“Mrs.  
5 Mecay”)<sup>1</sup>, a California resident, split their time between multiple homes, including 2305 Finney  
6 Street. They also use 2305 Finney Street as a short-term rental property.

7           c. Procedural Background

8           On May 26, 2020, the Lacertes filed a complaint for declaratory relief and trespass  
9 against BMO. BMO filed a special and general demurrer to each cause of action, which was  
10 overruled in its entirety by this Court. On October 23, 2020, BMO filed a verified cross-  
11 complaint for prescriptive easement, quiet title, obstruction and interference with express  
12 easement and declaratory relief against the Lacertes.

13           On March 21, 2021, BMO filed a motion for leave to amend its cross-complaint to add a  
14 new cause of action for intentional interference with express and prescriptive easements. The  
15 new cause of action included allegations that the Lacertes intentionally interfered with the  
16 Access Easement by parking within and blocking it and a new claim that the Lacertes  
17 constructed a fence on a beach access that BMO had purportedly used since 2005. The Court  
18 granted the motion for leave to file the FACC. The Court also severed the beach access issue  
19 from the FACC and deferred its resolution, while separately moving forward with trial on the  
20 easement-related issues. On May 24, 2021, BMO filed its FACC.

21       **II. The Court finds that BMO failed to meet its burden of proof to establish its**  
22       **prescriptive easement claims to park on the Access Easement and use the Private**  
23       **Driveway as a turnaround.**

24           a. Burden of Proof and Elements of a Prescriptive Easement

25           “The elements necessary to establish an easement by prescription are open and notorious  
26 use of another's land, which use is continuous and uninterrupted for five years and adverse to the  
27

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28       <sup>1</sup> Mrs. Mecay’s legal name is Susan Ackerman.

1 land's owner.” Grant v. Ratliff, 164 Cal.App.4th 1304, 1308 (2008); Code Civ. Proc. § 321.  
2 “Title is presumed to be as disclosed by the public records, and it is presumed that possession of  
3 the property is deemed to have been under and in subordination to the legal title.” 6 Miller &  
4 Starr, Cal. Real Est. § 15:32 (4th ed.) Code Civ. Proc. § 321. “[A] party seeking to establish a  
5 prescriptive easement has the burden of proof by clear and convincing evidence. [Citation  
6 omitted] The higher standard of proof demonstrates there is no policy favoring the establishment  
7 of prescriptive easements.” Grant v. Ratliff, 64 Cal.App.4th at 1310; 28 Cal. Jur. 3d Easements  
8 and Licenses § 90.

9 To satisfy the “visible, open and notorious” element of a prescriptive easement claim, the  
10 claimant must prove that its use was “sufficiently visible, open, and notorious so that anyone  
11 viewing the servient tenement would discover the easement.” 6 Miller & Starr, Cal. Real Est. §  
12 15:34 (4th ed.).

13 A claimant cannot satisfy its burden as to adverse use where the use was a neighborly  
14 accommodation with the neighbor’s implied or express permission. Windsor Pacific LLC v.  
15 Samwood Co., Inc. 213 Cal.App.4th 263, 271 (2013) disapproved of on other grounds  
16 by Mountain Air Enterprises, LLC v. Sundowner Towers, LLC, 3 Cal.5th 744 (2017); Case v.  
17 Uridge, 180 Cal.App.2d 1, 8 (1960); 6 Miller & Starr, Cal. Real Est. § 15:36 (4th ed.) Where the  
18 use of a neighbor’s property is “so much of the nature of a custom as generally to excite no  
19 suspicion that it is hostile to the neighboring landowner”, clear evidence must be presented to  
20 overcome the presumption that ownership is with the paper title. Eddy v. Demichalis, 100  
21 Cal.App. 517, 521 (1929). “The adverse claim of right must not only exist in the mind of the  
22 claimant, but must be proven to have been communicated in some way to the owner so that his  
23 failure to object may be taken against him as an acknowledgment of or acquiescence in the right  
24 claimed.” Id. at 521. Whether the use of property has been adverse, or a mere matter of  
25 neighborly accommodation, is a question of fact to be determined from all of the circumstances  
26 of the case, including the relationship and conduct of the parties and the situation of the property.  
27 O'Banion v. Borba, 32 Cal.2d 145, 150 (1948); Grant v. Ratliff, 164 Cal.App.4th 1304 (2008).

28 ///

1           b. The Court finds that BMO failed to meet its burden of proof by clear and  
2           convincing evidence to establish a prescriptive easement to park on the Access  
3           Easement.

4           The Court is persuaded that BMO's use of the Access Easement for parking was a  
5           permissive, neighborly accommodation by the Hotchkisses, the prior owners of 2311 Finney  
6           Street. Testimony established that during the period that BMO claims to have established its  
7           prescriptive right, the Hotchkisses were not full-time residents at 2311 Finney Street. BMO  
8           offered no evidence establishing that the Hotchkisses, or anyone else, were present at 2311  
9           Finney Street at the same time that BMO parked in the Access Easement. Temporary parking in  
10          an easement when the owners of the servient tenement are often not present is not sufficient to  
11          impart constructive notice to the Hotchkisses of the Mecays' adverse use.

12          Moreover, both Robert and Suzy Mecay testified that they enjoyed a cooperative, friendly  
13          relationship with the Hotchkisses: they had dinner together, went to the beach together, worked  
14          cooperatively on a lot line adjustment together, discussed personal issues, such as Mrs.  
15          Hotchkiss's health issues, and stayed in touch after the Hotchkisses sold 2311 Finney Street to  
16          the Lacertes. Testimony established that the Hotchkisses never objected to the Mecays' use of  
17          their Access Easement for parking.

18          Additionally, Mr. Mecay testified that, because of the tight fit on Finney Street, it was the  
19          custom of the neighborhood for neighbors to make accommodations for each other to negotiate  
20          the space restrictions of Finney Street. To the extent that the Hotchkisses were aware of the  
21          Mecays' temporary parking in the Access Easement, the Court is persuaded that allowing the  
22          Mecays to park in the Access Easement as a neighborly accommodation is aligned with the  
23          custom and practice of the neighborhood, especially given the Hotchkisses' intermittent use of  
24          2311 Finney Street.

25          Mr. Mecay further testified when the Lacertes were investigating 2311 Finney Street as  
26          part of the purchase process, he introduced himself and provided them information about the two  
27          properties to assist in their due diligence. He testified that he told them about the lot line  
28          adjustment that affected both properties and his plans to build an accessory dwelling unit.

1 Despite alerting them to information that he thought may affect their decision to purchase the  
2 property, he admitted that he never told them about his claimed prescriptive right to park in the  
3 Access Easement.

4 Beyond Robert and Suzy Mecays' own testimony, BMO offered no evidence or  
5 testimony to establish that their use of the Access Easement was hostile and adverse. Given the  
6 Hotchkisses' frequent absence from the property, the Mecays' neighborly relationship with the  
7 Hotchkisses, and the custom and practice of neighborly accommodation for space constraints on  
8 Finney Street, the Court is unpersuaded that parking in the Access Easement was anything more  
9 than a neighborly accommodation by the prior owners of 2311 Finney Street. Accordingly, the  
10 Court finds that BMO failed to establish by clear and convincing evidence that its use of the  
11 Access Easement for parking was open, notorious, visible, continuous, adverse, and hostile for at  
12 least five years and its claim for a prescriptive easement to park on the Access Easement is  
13 denied.

14 c. The Court finds that BMO failed to meet its burden of proof by clear and  
15 convincing evidence to establish a prescriptive easement to use the Lacertes'  
16 Private Driveway as a turnaround.

17 Having considered the testimony of the witnesses at trial, the exhibits admitted into  
18 evidence and the trial briefs, the Court finds that BMO failed to meet its burden of proof by clear  
19 and convincing evidence that its use of the Private Driveway as a turnaround was open,  
20 notorious, visible, continuous, adverse, and hostile for at least five years.

21 No evidence was presented that the Hotchkisses were aware of the Mecays' transient use  
22 of their driveway as a turnaround or had ever objected to it. To the extent the Hotchkisses were  
23 aware of BMO's use of their driveway, the Court is persuaded that BMO's use of the Private  
24 Driveway was a permissive, neighborly accommodation. Permitting said use would be  
25 reasonable to expect given the cooperative, neighborly relationship between the Hotchkisses and  
26 the Mecays, the Hotchkisses' frequent absence from the property, and the custom and practices  
27 of the neighborhood.

28 Additionally, Mr. Mecay testified that he did not believe that he had developed a

1 prescriptive right to use the Private Driveway as a turnaround and did not bother to tell the  
2 Lacertes about BMO's claimed right to use the driveway during the purchase process, even  
3 though he had felt compelled to disclose other issues that may affect the Lacertes' purchase.  
4 Accordingly, because BMO failed to meet its burden of proof, BMO's claim for a prescriptive  
5 easement to use the Private Driveway as a turnaround is denied.

6 **III. The Court finds that BMO's prescriptive easement claims fail as a matter of law**  
7 **because, if granted, they would constitute unlawful, exclusive prescriptive**  
8 **easements.**

9 An exclusive prescriptive easement excludes the servient tenement owners from using,  
10 occupying, or enjoying their property in any meaningful way. Silacci v. Abramson, 45  
11 Cal.App.4th 558, 564 (1996). Exclusive prescriptive easements are not appropriate in residential  
12 real property disputes. Mehdizadeh v. Mincer, 46 Cal.App.4th 1296, 1306-1307 (1996). A  
13 claimant seeking to strip the fee owner of all practical uses of his or her property must present  
14 proof of adverse possession, which requires, in addition to the elements of a prescriptive  
15 easement, payment of all taxes assessed against the burdened property for five years. Id. One  
16 factor in determining whether an easement rises to the level of an unenforceable exclusive  
17 prescriptive easement is how it affects the salability and usability of the land for other purposes.  
18 Id. at 1307–1308.

- 19 a. BMO cannot establish a prescriptive right to park in the Access Easement because  
20 it would divest the Lacertes of any meaningful use of their property.

21 BMO seeks a judgment whereby it will be granted an easement by prescription that will  
22 allow it, and anyone else conceivably associated with it, to park two cars within the Access  
23 Easement. An easement to park vehicles can amount to an exclusive easement by effectively  
24 dispossessing the servient estate holder from any meaningful use of the servient tenement. See,  
25 e.g., Rye v. Tahoe Truckee Sierra Disposal Co., Inc., 222 Cal.App.4th 84 (2013).

26 The Court, having considered the testimony of the witnesses at trial, the exhibits admitted  
27 into evidence and the trial briefs, is persuaded that BMO's use of the Access Easement for  
28 parking would exclude the Lacertes from using their property in any meaningful way, including



1 backing into the Access Easement to exit their property, or gaining access to their side porch.  
2 (See, e.g., Trial Exhibit 029). No evidence was presented that BMO paid property tax on the  
3 Access Easement and therefore BMO is not entitled to exclusive use of the Access Easement. As  
4 such, the Court finds that BMO's prescriptive claim to park two vehicles in the Access Easement  
5 fails as a matter of law.

6 b. BMO cannot establish a prescriptive right to use the Private Driveway as a  
7 turnaround because it would divest the Lacertes of any meaningful use of their  
8 property.

9 Based on the testimony of Dominique and Bridgette Lacerte, video evidence, and the  
10 parties' trial briefs, the Court is persuaded that if BMO were granted a prescriptive right to use  
11 the Lacertes' Private Driveway as a turnaround, it would substantially interfere with the  
12 Lacertes' existing uses of the driveway for parking, ingress, egress and recreation. (Trial Exhibit  
13 Nos. 21, 22, and 23.) By hindering the Lacertes' ability to park in their own driveway, it would  
14 also interfere with the Lacertes' ability to convert the garage to livable space, thereby negatively  
15 affecting the value of the property. No evidence was offered that BMO has paid property tax on  
16 the Private Driveway and therefore BMO is not entitled to exclusive use of the Lacertes' Private  
17 Driveway. Accordingly, BMO's claim for a prescriptive easement in the Lacertes' driveway  
18 fails as a matter of law because it would deprive the Lacertes of any meaningful use of their  
19 property and amount to an unlawful, exclusive prescriptive easement.

20 **IV. The Court finds that BMO's prescriptive easement claim to park in the Access**  
21 **Easement fails as a matter of law because parking in the Access Easement**  
22 **constitutes a fire hazard, public health and safety risk, and public nuisance.**

23 Where the use of a property right constitutes a public nuisance, the right to continue that  
24 public nuisance cannot be acquired by prescription. Civ. Code § 3490 ("No lapse of time can  
25 legalize a public nuisance, amounting to an actual obstruction of a public right."). "Even though  
26 the acts that give rise to a prescriptive right often constitute a private nuisance, a person cannot  
27 acquire a prescriptive right to maintain a public nuisance." 6 Miller & Starr, Cal. Real Est. §  
28 15:29; City of Turlock v. Bristow, 103 Cal.App. 750, 756 (1930). Fire hazards constitute a

1 public nuisance. Vedder v. County of Imperial, 36 Cal.App.3d 654, 661 (1974); City of Los  
2 Angeles v. Shpegel-Dimsey, Inc., 198 Cal.App.3d 1009, 1017 (1988).

3 The Mecay and Lacerte Properties are located within the Carpinteria-Summerland Fire  
4 Protection District (“CSFPD”) and, pursuant to the CSFPD Ordinance 2020-01, are subject to the  
5 ‘Fire Code of the Carpinteria-Summerland Fire Protection District’ (“CSFPD Fire Code”), which  
6 incorporates the CSFPD Development Standard for Fire Apparatus Access.

7 Having considered the testimony of Roy Harthorn and Douglas Nickles, the exhibits  
8 admitted into evidence, and the trial briefs, the Court is persuaded that parking in the Access  
9 Easement is inconsistent with the CSFPD Fire Code and creates a fire hazard, public safety risk,  
10 and public nuisance. The Court is further persuaded by Roy Harthorn’s testimony, the email  
11 correspondence between Mr. Douglas Nickles and Fire Marshall Robb Rappaport, and the  
12 relevant fire code provisions and development standards, that regardless of whether the Access  
13 Easement is deemed to be an official ‘Fire Apparatus Access Road,’ a ‘Means of Egress’, or  
14 otherwise, the Access Easement must be kept clear of obstructions, including the parking of  
15 vehicles, for the purpose of protecting public health and safety. (Trial Exhibit No. 08, p. 32-37.)  
16 Beyond creating a fire hazard, the Court finds that obstructing the Access Easement also impedes  
17 an ambulance’s ability to access portions of the Lacerte and BMO properties.

18 Accordingly, because parking cars in the Access Easement is inconsistent with the  
19 relevant fire code provisions and imperils public health and safety, the Court finds that parking in  
20 the Access Easement constitutes a public nuisance that cannot ripen into a prescriptive right.

21 **V. The Court finds that the Lacertes’ low rock retaining wall, planter, and chain fence**  
22 **do not interfere with BMO’s use of the Access Easement.**

23 The Court is persuaded by both the testimony of the parties and the video evidence that  
24 the low rock retaining wall, the planter adjacent to the eastern border of the Lacerte residence,  
25 and the driveway chain fence do not interfere with BMO’s use of the Access Easement. (Trial  
26 Exhibit Nos. 24-28.) Additionally, the Court further finds that the current low rock retaining  
27 wall and planter are consistent with the historic use of the Access Easement.

28 BMO has requested that the Court order the Lacertes: (1) to pave over the planter bed

1 adjacent to their residence, and (2) to pave over the northern portion of the easement to make  
2 BMO's egress more convenient. BMO's request to pave over the northern portion of the  
3 easement constitutes a substantial expansion of its easement rights, which is not supported by the  
4 evidence. The evidence established that the northern portion of the easement has never been  
5 paved or used for ingress and egress, but rather has been a landscaped area which houses  
6 underground utilities. Repurposing the use of the Lacertes' property for the sole benefit of BMO  
7 is tantamount to transferring fee title of that property to BMO, which is not supported by the law  
8 or facts of the case. Such a transfer would have required BMO to establish the elements of an  
9 adverse possession claim, including the payment of taxes, which BMO has not done.

10 Additionally, BMO's requests for such extreme mandatory injunctive relief came too late  
11 to be considered by the Court. BMO's first amended cross-complaint, which was filed only  
12 three and a half months before trial, contains no mention of the planter bed and did not request  
13 that either the northern portion of the easement or the planter bed be paved over. Rather, the  
14 amended cross-complaint sought only the removal of the rock wall. As such, BMO is precluded  
15 from seeking such extraordinary relief at trial.

16 **VI. BMO's Use of the Lacertes' Private Driveway Constitutes an Unlawful Trespass.**

17 Trespass is an unlawful interference with possession of property. Staples v. Hoefke, 189  
18 Cal.App.3d 1397, 1406 (1987). The elements of trespass are: (1) the plaintiff's ownership or  
19 control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the  
20 property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5)  
21 the defendant's conduct was a substantial factor in causing the harm. See Judicial Council of  
22 California Civil Jury Instruction 2000; Ralphs Grocery Co. v. Victory Consultants, Inc., 17  
23 Cal.App.5th 245, 261–262 (2017). The Court is persuaded by the testimony of Bridgette and  
24 Dominique Lacerte, Robert Mecay, and video evidence that BMO has committed an intentional  
25 trespass onto the Lacertes' Private Driveway, which has interfered with the Lacertes' property  
26 rights. (Trial Exhibit Nos. 21, 22, and 23.) The Court is also persuaded by the testimony of  
27 Bridgette and Dominique Lacerte that the chain fence has substantially mitigated the safety  
28 issues that were associated with the Mecays' trespass onto the Private Driveway.

1 **VII. JUDGMENT**

2 (1) The Court hereby issues a declaratory judgment in favor of Plaintiffs/Cross-  
3 Defendants Arthur and Dominique Lacerte, as trustees of the Arthur Joseph Lacerte Survivor's  
4 Trust Dated July 11, 2018, and declares as set forth herein:

5 A. Defendant/Cross-Complaint has no legal right to park its vehicles in the Access  
6 Easement, including the vehicles of its guests, invitees, employees, servants and agents;

7 B. Defendant/Cross-Complainant has no legal right to occupy or use the Access  
8 Easement other than for the express purposes of ingress, egress, and private underground  
9 utilities, as set forth in the grant deed recorded on September 29, 1989, as Instrument No. 89-  
10 064952;

11 C. Defendant/Cross-Complainant, and its agents, servants, employees, guests, and  
12 invitees have no legal right to use the Lacerte Private Driveway as a turnaround;

13 D. Plaintiffs/Cross-Defendants may retain the existing chain fence across their Private  
14 Driveway;

15 E. Plaintiffs/Cross-Defendants may retain the portion of the low rock retaining wall that  
16 is located on their Private Driveway;

17 F. Plaintiffs/Cross-Defendants shall replace the portion of the low rock retaining wall  
18 that is in the Access Easement with a railroad tie retaining wall, with the cost of the replacement  
19 to be borne by Plaintiffs/Cross-Defendants;

20 G. Plaintiffs/Cross-Defendants may retain the planter located alongside the eastern  
21 border of the Lacerte residence.

22 H. Both Plaintiffs/Cross-Defendants, and their agents, servants, employees, guests, and  
23 invitees and Defendant/Cross-Complaint and its agents, servants, employees, guests, and invitees  
24 are prohibited from parking on the Access Easement, with the following exceptions:

25 i. Said parking restriction shall not apply to brief, transitory and temporary idling of  
26 vehicles in the Access Easement for pickup and delivery services; and

27 ii. Said parking restriction shall not apply to brief, transitory and temporary idling of  
28 vehicles by Plaintiffs/Cross-Defendants and their guests, invitees, servants, employees, and

1 agents for purposes of removing and re-hooking the chain fence across the Lacerte driveway.

2 (2) BMO's prescriptive easement claim for parking in the Access Easement is denied.

3 (3) BMO's prescriptive easement claim for using the Lacertes' Private Driveway as a  
4 turnaround is denied;

5 (4) Plaintiffs/Cross-Defendants are awarded nominal damages in the amount of \$1  
6 pursuant to Plaintiffs/Cross-Defendants' Second Cause of Action for Trespass;

7 (5) Plaintiffs/Cross-Defendants are awarded costs in an amount to be determined by the  
8 Court post-trial after submission of a cost memorandum.

9 (6) Pursuant to Code of Civil Procedure § 664.6, this Court shall retain jurisdiction over  
10 the parties to enforce the terms this judgment.

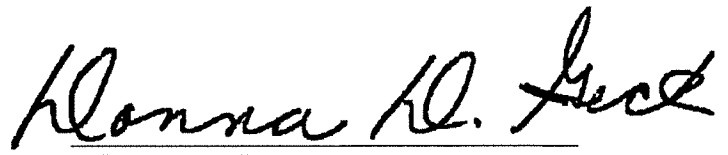
11 **Statement of Decision**

12 This Tentative Decision shall constitute the Court's Statement of Decision as described in  
13 California Rules of Court Rule 3.1590 unless within 10 days either party specifies any "other"  
14 controverted issues or makes any "other" proposals not covered in the Tentative Decision. If  
15 there are other controverted issues or proposals not covered in the Tentative Decision, the Court  
16 will prepare the Statement of Decision after the parties have submitted their positions on the  
17 issues pursuant to the timelines in California Rules of Court Rule 3.1590.

18 **Judgment**

19 Counsel Eric Berg for Plaintiff/Cross-Defendants, shall, within five (5) days hereof,  
20 prepare, serve and file a Proposed Judgment, consistent with this Tentative Statement of  
21 Decision, and the Proposed Judgment shall be submitted to counsel for Defendant/Cross-  
22 Complainant, Marc V. Allaria of Litchfield Cavo LLP, for signature in accordance with  
23 California Rules of Court Rule 3.1590. Counsel shall follow the protocol set out in California  
24 Rules of Court Rule 3.1590.

25 Dated: October 7, 2021

26 

27 DONNA D. GECK  
28 Judge of the Superior Court

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**PROOF OF SERVICE**


I am a citizen of the United States and employed in Santa Barbara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Berg Law Group, 3905 State Street, Suite 7-104, Santa Barbara, California 93105. On October 12, 2021 I served a copy of the within document(s):

**PROPOSED JUDGMENT**

by electronically serving the document(s) listed above on the persons and in the manner described in an attachment per Agreement.

◆ **Marc V. Allaria, Esq.**  
**Litchfield Cavo LLP**  
**2 North Lake Ave, Suite 400**  
**Pasadena, CA 91101**  
**Allaria@LitchfieldCavo.com**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 12, 2021, at Santa Barbara, California.



Eric Berg

EXHIBIT 2



# The Beach Cottage



## *The Beach Cottage*

SUMMERLAND

### **2000 SQ/Ft - 3 BR, 2 BTH**

Enjoy a luxurious retreat at this marvelous Summerland oasis, just minutes away from all of Santa Barbara's amazing attractions! Enjoy the perfect weather from your gorgeous private patio, and enjoy all the high-end amenities this stunning three-bedroom, 2000 square foot marvel provides.

The interiors of this lovely abode boast a spacious design and light, beachy design. Wide windows surround the living room, decorated with light wood accents and pristine furnishings. You can enjoy shimmering ocean views from the comfort of your living room, or step outside to your expansive deck and get a closer look!



chef's kitchen will delight and culinary expert, outfitted with high-end Viking appliances and gleaming marble countertops. After dinner, relax on the patio and take in the sunset over the ocean, or dine alfresco as you enjoy the ocean breeze.

Each of the three bedrooms is extremely comfortable, offering queen-sized beds to soothe you as you listen to the soft crash of the waves outside. Each bed is covered with crisp, clean linens and plush bedding, and each bathroom features lovely bath amenities for your use.

Before calling it a night, start up a fire in the fire pit outside and reminisce on the day. The lawn has plenty of room for outdoor activities for the kids, giving them space to run around while you enjoy lounging in one of many plush sunbathing chairs or an outdoor sofa.

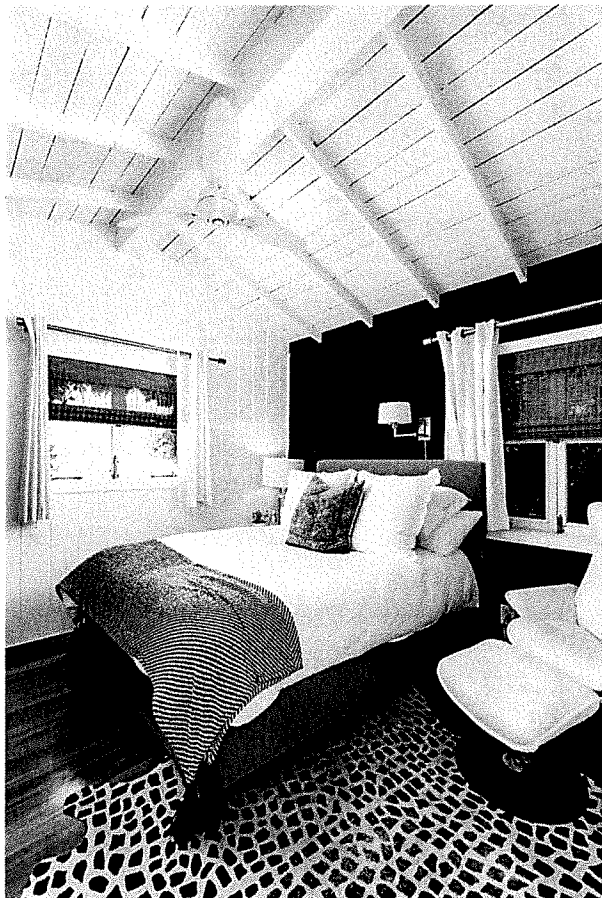
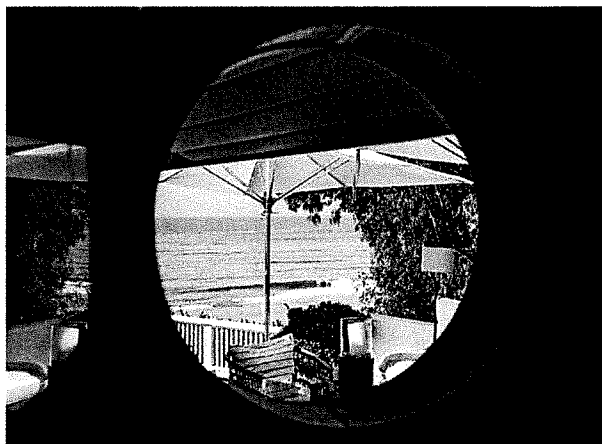
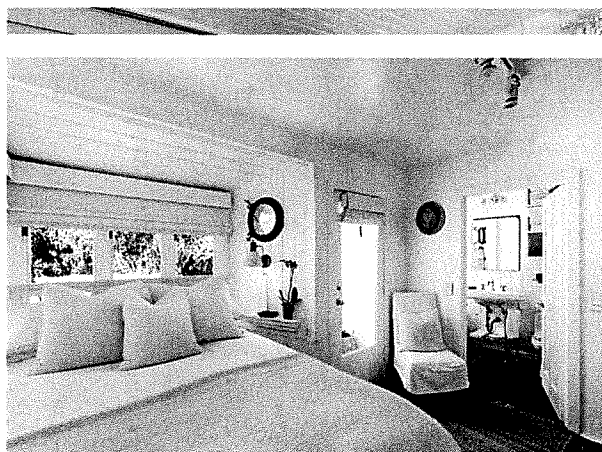
While you'll feel miles away from the rest of the world, this magnificent home features a location that gives you easy access to all that Santa Barbara has to offer. Downtown Santa Barbara is just a quick drive away, and the pristine sands of Summerland Beach are literally steps from your door! In Santa Barbara, gorgeous architecture, culture, and an excellent culinary scene await you! With adventures and activities for all tastes, Santa Barbara is sure to offer something for everyone. Spend the day at the beach, exploring wineries nearby, or losing yourself in the historic and artistic soul of the city.

You won't find a more serene spot than this Summerland Oasis!

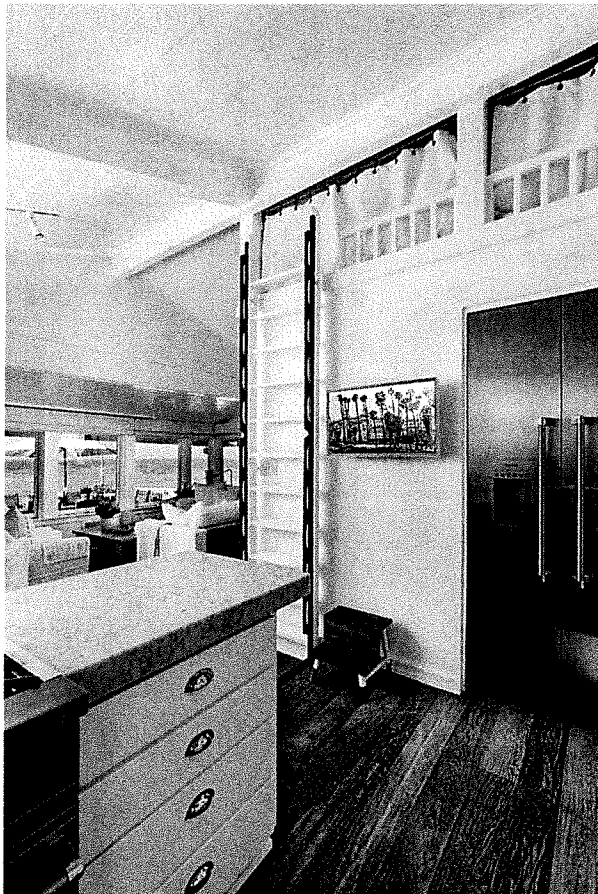
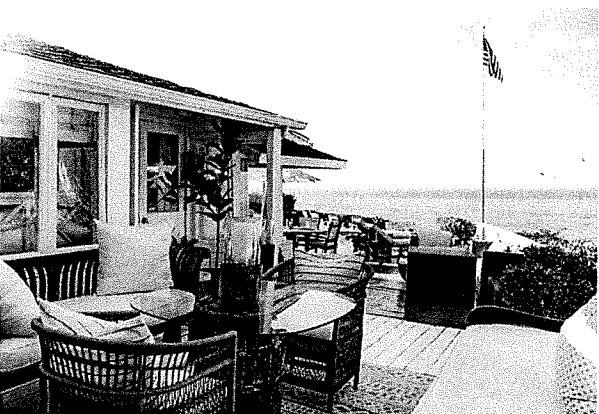
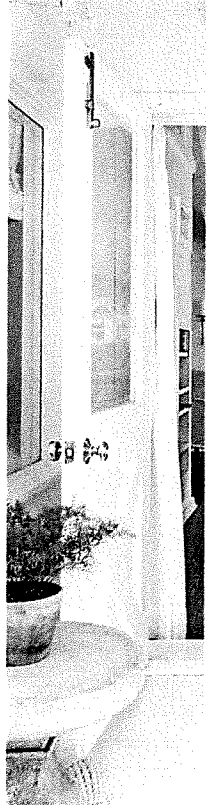
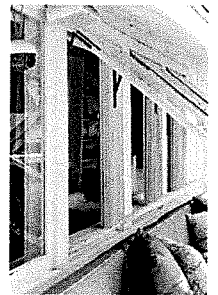
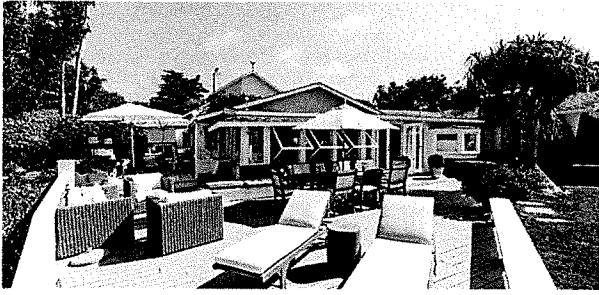
This property is rented monthly, with a 29 day max.



MIRAMAR LANE



MIRAMAR  
LANE



### at the Beach Cottage:

Featured



Spend A Summer Day in Santa Barbara



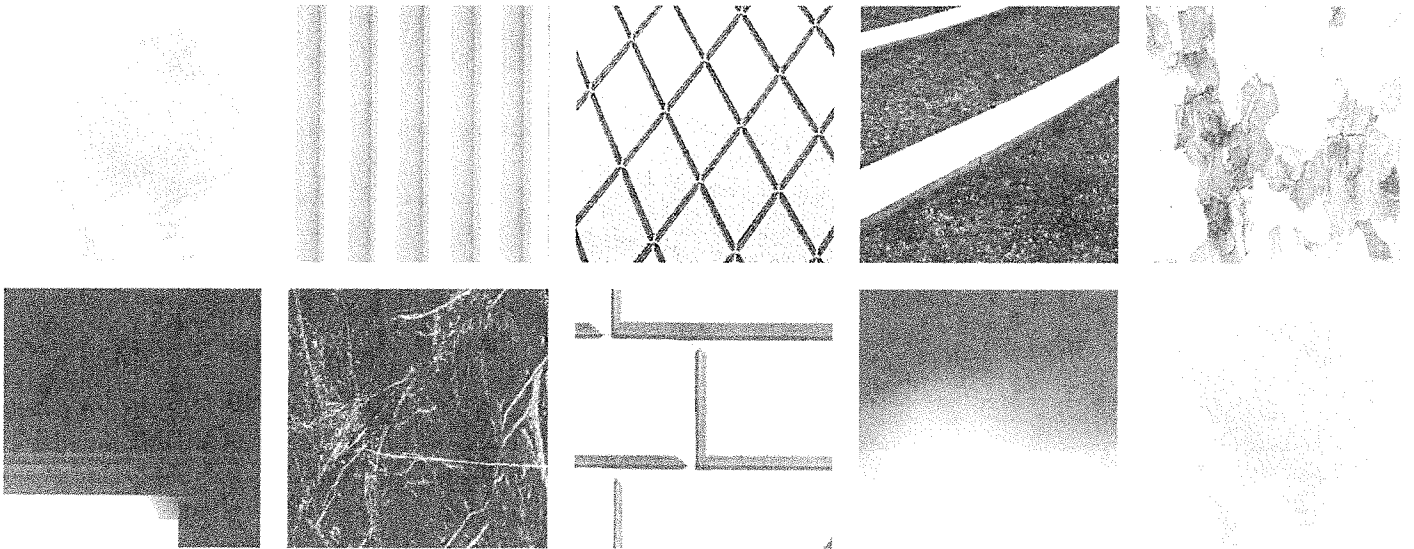
Santa Barbara: With Kids



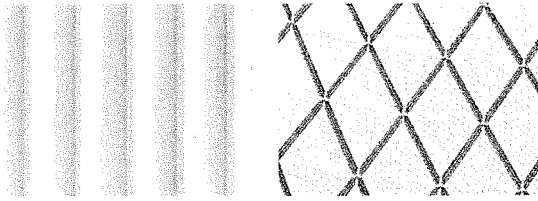
A Guide to the Funk Zone

Not sure where the hip places are in Santa Barbara?  
Then you haven't been to the Funk Zone!

### MEANWHILE, ON INSTAGRAM:



MIRAMAR  
LANE



Previous  
THE PALM COTTAGE

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