

# Santa Ana del monte



## Residents Cooperative

Tony Malpass and Brian Dornan asked that I attend a meeting on behalf of SARC members which was arranged for Thursday 3rd October at 12 noon.

Those present at the meeting were Almudena, David (my husband) and myself. Suemac and John had intended to be there but sent apologies due to unforeseen circumstances.

I would like to thank Tony and Brian for making the arrangement.

Whilst there are those who do not believe these meetings achieve anything, I personally disagree. I feel that it gives all purchasers another perspective from which to form and ask questions, particularly of their respective legal representatives. Any information must surely help all of us to make better informed decisions about what are, at the end of the day, our futures. Any mistakes in interpretation, legal or otherwise are mine.

I hope there is something of interest here for all, regardless of what you wish the end result to be. I do not fully understand the administration process but have written below what transpired at this meeting and asked the questions I thought appropriate and to the best of my ability. Many of the questions asked were those specifically asked by SARC members

It is necessary to separate San Jose from Herrada del Tollo. Creditors cannot be swapped from one company to another. Herrada del Tollo is in a different situation and with the exception of a conversation in regard to El Pinet, all the information below is in respect of Herrada del Tollo however, some will also be global.

### **State of Play at the Moment**

Almudena started by saying that essentially, from the creditors point of view, nothing has changed since the company was put into administration.

H del T still require Four and a Half Million Euros in order to acquire the expropriated land. There are several groups interested in investing in, a part of, or the whole project. These include American and Russian companies.

The Administrators are still working to obtain an agreement. It is a long process due to the checks required for future monetary requirements.

The Administrators are currently writing the report which will go to the Judge. It is expected to be complete and with the judge by end of October, early November latest.

The judge will need to evaluate the report and sometimes this can be up to 4 months. There is no time limit on the judge to make a ruling. However, the judge does not normally take long to reach his conclusions and it was thought it would not be long in this case. It is possible that the judge could allow more time to the Administrators to work with the company to reach a successful conclusion.

### **Process/Procedure once the judge has made his ruling** **- If he decides Herrada del Tollo can continue to trade out of their difficulties**

The present phase of the administration process is called 'Fase Comun'

The next phase is called 'Convenio'

It is at this stage that the Administrators instruct Herrada del Tollo to contact creditors.

It is at this stage that you will be asked if you wish to continue with the contract or wish to terminate the contract.

It is at this stage the 'Convenio' when clients can negotiate things like compensation and what they would like to have written in their contracts.

The Administrators would stay indefinitely.

Normally, the judge looks at the situation and does not allow the company to continue if he feels there is a danger of them collapsing again within a short period of time. He normally looks to a long period.

A review of the plans has been and is being considered.

Those with live contracts will be given the opportunity to move to another property or plot if they wish. They can upgrade and will need to negotiate this at the time of the 'Convenio'

The golf course will stay as will the club house.

The amenities will be reviewed and accessed according to the number of live contracts at the time.

### **Process/Procedure once the judge has made his ruling**

#### **- If he decides Herrada del Tollo cannot continue to trade out of their difficulties**

Herrada del Tollo will go into liquidation.

This is a new process.

There is no money and in this situation, the main objective of the Administrators is to balance sales of assets with credits. There is no guarantee that this can be achieved. This can take anything from 1 year to many years.

### **El Pinet**

It was felt that the issues involving El Pinet would not take long to resolve. Between 1 and 2 months.

They have not yet got the financial backing they need but are negotiating, together with the Administrators, with a bank and it is looking very positive.

El Pinet will be the 1st to be finished.

The company who were negotiating for the land for the hotel are still interested. However, once the Administration process was announced the offer for the land was reduced and this is being negotiated with the help of the Administrators. There are other interested parties as El Pinet needs a hotel.

### **Contracts.**

Some of the following is probably quite controversial but I feel it is necessary to include as it allows everyone to form opinions and questions to put to their respective legal representatives.

New contracts will not be written. Anything renegotiated during the 'Convenio' stage will be appended to the original contract.

A meeting was taking place on Thursday afternoon between a legal representative representing his clients, the Administrators and Herrada del Tollo Directors.

The object was to find a resolution whereby his clients could cancel their contracts. The resolution was not found on this occasion.

25% of creditors have BG's

If you have a BG and your contract is cancelled. The bank has to pay unless they can find a legal reason not to.

If you do not have a BG and your contract is cancelled, if your credit is not considered privileged, then you remain on the creditors list but without any options to negotiate at a future date.

If your contract remains live you leave your options open.

Any deal negotiated between Legal representatives, Administrators and Herrada del Tollo which is considered privileged is available to all as it will set a precedent.

From the point of view of Herrada del Tollo, if they thought they were going into liquidation, there would be some advantages in negotiating as it could be possible to avoid paying taxes and interest.

The following are answers to questions I asked my lawyer and only refer to those without a BG. **but please do not rely on these. Ask put your own questions to your own lawyer.**

If a contract is out of date and the purchaser closes this contract, with the help of his lawyer negotiating a final agreement, and this amount is then placed on the creditors list, because there is no money to pay.

If a termination of a contract is agreed with the Administrators, then part of the agreement must be that the credit is not considered 'ordinary' but considered 'credit against the mass', which means that these are paid in first turn.

What is the position of this person, who now has no choice other than to stay on the creditors list, if the judge liquidates and another company buys the company in liquidation.

The new company takes over debt. Buying the company means buying debits and credits. If the company is liquidated, then contracts would no longer be valid anyway and creditors would be paid off with the remains.

What is the position for this person if a deal/take-over is agreed and the judge does not liquidate.

The deal will establish when is the payment/handover due.

If you keep the contract with Herrada del Tollo and a deal/takeover is agreed and the judge allows the company to continue, what is the position of the person with a contract. Albeit out of date.

At the moment the company continues trading under Court control. The position of a buyer is the same as today. He can choose whether to reverse the contract due to failure on completion date, and then claim for his credit, or continue waiting.

Does that new company have to take on the debt or can they take the ongoing business only.

Depends on what is agreed with the company that comes along, but no agreement can leave creditors out, and no agreement can mean more than 50% loss.

#### Comments.

Normally David and I would refrain from adding our thoughts to any report but felt as we were the only ones there that we would on this occasion. However, it is purely speculation and nothing else.

David felt that there are negotiations continuing but that the companies involved wanted to either, take over the whole of the company, or at the very least, have controlling interest which is not acceptable to Herrada del Tollo directors at the moment.

I agreed with that assumption but also thought that as Herrada del Tollo are in a weak position at the bargaining table that it could be a last minute decision when pushed to the brink.

I felt that 'if' it is in the interests of Herrada del Tollo to negotiate a deal with lawyers, whereby they could save themselves both interest and taxes, then they would have done so. They may still do so but that was not the message that was coming across. Herrada del Tollo is the company that has the assets and sales in which to make a recovery so the situation is somewhat different to San Jose Inversiones.

Almudena also said for the first time that there is no money. This was very significant as previously it has been said, by some parties, that there was money in a safe account. David and I both believe that the money is in both assets and bank guarantees, possibly against loans with the BG as surety and the rest is spent and can be accounted for. We do know that there is a BG held by the Jumilla Ayuntamiento.

We also reminded ourselves that the Administrators will make the report and the judge will make his decision regardless of any speculation.

October 2008