



Ekstrom v. Marquesa at Monarch Beach Homeowners Association
168 Cal.App.4th 1111 (2008)

NOTE: Good discussion of *business judgment and judicial deference rules*; **judicial deference rule to be pled as an affirmative defense (business judgment rule should be as well); when CC&Rs clear and unambiguous, board cannot adopt rules/definition in conflict therewith or that render the CC&Rs meaningless.**

FACTS:

Plaintiffs owners' ocean and golf course views were blocked by palm trees.

The Marquesa at Monarch Beach Homeowners Association's ("Association") CC&Rs provided that "*all trees . . . be trimmed by Owner . . . so that they shall not exceed the height of the house on the Lot*;" provided, however, that where trees do not obstruct the view from any of the other Lots in the Properties, which determination shall be within the sole judgment of the ARC, they shall not be required to be so trimmed. Before planting any trees, the proposed location of such trees shall be approved in writing by the ARC which approval shall consider the effect on views from other lots." (Section 7.18)

The CC&Rs further provided that "each Owner . . . acknowledges that grading of, construction on or installation of improvements on other property . . . may impair the view of such Owner, and consents to such impairment." (Section 7.10)

For years, the Association excluded palm trees from Section 7.18's requirement that *all trees* not exceed the height of the house on the Lot; for aesthetic reasons. Owners complained that views were being blocked by palm trees and sought enforcement of Section 7.18 as to all trees, including palm trees. The Association's Board of directors sought two legal opinions, the latter of which advised the Board that Section 7.18 protected views from being obscured by trees growing above roof tops and that the Board had no authority to exclude palm trees. Further, the legal opinion stated that Section 7.10 applied only to the construction of physical improvements, such as houses, fences and decks, but not to view obstructions by trees, because trees were specifically covered by Section 7.18. The Board was advised by legal counsel that they had no authority to promulgate rules in contradiction of the express protection provided in the CC&Rs and that if they wanted to exclude palm trees, they would have to seek to amend the CC&Rs. Lastly, because the architectural review committee ("ARC") had the discretion to determine if trees interfered with views (CC&Rs Section 7.18), the association's legal counsel believed that the Board had discretion to formulate a definition of "view."

Thereafter, the Board adopted a rule defining "view" as that which is visible from the back of the house, six feet above ground level, standing in the middle of the outside of the house looking straight ahead to infinity, with nothing to the left or right of the lot lines being considered part of the home's view.

TRIAL COURT'S DECISION: In favor of owners.

The Trial Court concluded that Section 7.18 of the CC&Rs was intended to preserve ocean and golf course views and that there was nothing unclear or ambiguous in the terms used. The Trial Court rejected the restrictive definition of “view” as adopted by the Board as being in conflict the CC&Rs. The Trial Court found that Section 7.18 did not conflict with Section 7.10, in that Section 7.10 was limited to improvements, not including trees or vegetation. The Trial Court found that Section 7.18 gave the ARC discretion to decide whether a particular palm tree obstructed a neighbor’s view, but not to allow a palm tree that blocks a view to remain untrimmed.

The Trial Court rejected the Association’s assertion of the business judgment-judicial deference rule, because it was not pled as an affirmative defense in the Association’s answer, and, even if considered, did not apply to acts beyond the Board’s authority in the CC&Rs.

APPELLATE COURT’S DECISION: Affirmed the Trial Court.

1. Business Judgment/Judicial Deference Rule.

The Appellate Court held that the *Lamden* judicial deference rule is not as broad as the association claimed.

Quoting *Lamden*, the Appellate Court noted that:

“The common law business judgment rule has two components – [1] one which immunizes directors from personal liability if they act in accordance with its requirements, and [2] another which insulates from court intervention those management decisions which are made by directors in good faith in what the directors believe is the organization’s best interest. . . . A hallmark of its business judgment rule is that, when the rule’s requirements are met, a court will not substitute its judgment for that of the corporation’s board of directors.”

(*Lamden v. La Jolla Shores Clubdominium Homeowner’s Assn.* (1999) 21 Cal.4th 249, 253, 265)

The business judgment rule, as adopted by the California Supreme Court in *Lamden*, states that:

“[W]here a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion *within the scope of its authority under relevant statutes, covenants and restrictions* to select among means for discharging an obligation to maintain and repair a development’s common areas, courts should defer to the board’s authority and presumed expertise.”

(*Lamden, supra*, 21 Cal.4th at 253, 265)(emphasis added)

The Appellate Court held, however, that *Lamden* does not “extend judicial deference to board decisions that are *outside the scope of its authority* under its governing documents.” (*Ekstrom*, 168 Cal.App.4th at 1123)(emphasis added)

In applying the two components of the business judgment rule, the Appellate Court found that:

(1) First, Section 7.18 was not at all ambiguous, as it applied to “all trees” and that “nothing in the CC&Rs permits the Association to simply exclude an entire species of trees” from Section 7.18. Because “the Board’s interpretation of the CC&Rs was inconsistent with the plain meaning of the document” it was not entitled to judicial deference. (*Ekstrom*, 168 Cal.App.4th, at 1124)

(2) Second, the Appellate Court held that the new rules adopted by the Board, including the definition of “view,” are not entitled to judicial deference as they are in direct conflict with the CC&Rs. The Appellate Court found that Section 7.18 does not grant the Board the discretion to exclude view-blocking trees, but only grants the Appellate Court discretion to determine if a particular tree blocks a view. The Appellate Court also referred to the definition of “view” as a “bowling alley” definition, finding that “[e]ven if the Board had some discretionary authority to define what was meant by view, it was not free to fashion a definition that rendered section 7.18 meaningless.” (*Ekstrom*, 168 Cal.App.4th at 1124, citing *Nahrstedt v. Lakeside Village condominium Assn.* (1994) 8 Cal.4th 361, 380-381)

The Appellate Court distinguished *Ekstrom* from *Harvey v. Landing Homeowners Assn* (2008) 162 Cal.App.4th 809, finding that in *Harvey*, the board acted consistently within the authority granted it in the CC&Rs, but in *Ekstrom*, the Appellate Court found that the CC&Rs did “not give the Board discretion to act as it did.” (*Ekstrom*, 168 Cal.App.4th at 1124-1125)

NOTE: The Appellate Court never expressly found (although it implied) that the Association was without authority or the discretion to define “view” for purposes of the CC&Rs, but only specifically found that the definition adopted rendered the CC&Rs meaningless, which it was not free to do. (See *Ekstrom*, 168 Cal. App.4th at 1123)

2. Must be Pled as an Affirmative Defense.

The Appellate Court held that because a defense of good faith is factual in nature, the rule of judicial deference as to decisions of a homeowner association board must be pled as an affirmative defense or it will be considered waived. Just to be safe, the business judgment rule should be pled as an affirmative defense, as well.

QUOTABLE QUOTE

“In current economic times, it might make little economic sense for the Association to pursue costly litigation against individual homeowners who refuse to comply with the CC&Rs, particularly since it is all the homeowners, including the Plaintiffs who will ultimately bear the cost of such litigation. And in such case, the Plaintiffs are certainly free to pursue their own litigation against individual homeowners to compel removal of any specific offending palm trees.” (*Ekstrom*, at 1126, citing *Lamden, supra*, 21 Cal.4th at 268 (homeowner can sue directly to enforce CC&Rs))

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