

Harvey v. The Landing Homeowners Association, et al.

162 Cal.App.4th 809 (2008)

NOTE: Good contract interpretation language; application of *judicial deference rule*; distinguished from *Nahrdstedt* and *Ekstrom* because of discretion granted Board of Directors in CC&Rs.

FACTS:

The Landing community is a 4-story, 92-unit condo complex. Twenty-three (23) of the units have common area attic spaces adjacent to the units. The attics are only accessible to the units to which they are adjacent. For many years, some of the owners used the attic spaces for storage and one owner converted a portion of the common area attic into a habitable living space.

The Landing's CC&Rs (Article IV, Section 12) provide that:

“The Board shall have the right to allow an Owner to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.”

Pursuant to this provision of the CC&Rs, the Association's Board of Directors decided to (1) permit owners to use 120 square feet or less of the attic space for storage, (2) obtain prior Board approval to use the attic space, and (3) allow owners to only use storage space in pillars located in the entrance to front patios. Owners were required to sign a written “permission form” to use the space, requiring among other things, that owners obtain \$1 million liability insurance coverage.

Thereafter, the Board adopted a resolution, transferring to fourth floor owners, the “exclusive right to use the common area attic space in that owner's unit” as allowed in the then newly enacted Civil Code Section 1363.07(a)(3)(E).

Harvey, an owner and member of the Board of Directors, sued the Association for trespass, breach of fiduciary duty and injunctive relief.

TRIAL COURT'S DECISION: In favor of Association.

The Trial Court upheld the Board's decision, finding that the Board acted within its authority under the CC&Rs and deferred to the Board's presumed expertise on the use of the common area attic space.

APPELLATE COURT'S DECISION: Affirmed the Trial Court.

1. Contract/CC&R Interpretation.

“CC&Rs are interpreted according to the usual rules for the interpretation of contracts generally, with a view toward enforcing the reasonable intent of the parties.” (*Harvey*, 162 Cal.App.4th at 817; citing *Nahrdstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 380-381; *Moorpark HOA v. VRT Corporation* (1998) 63 Cal.App.4th 1396, 1410)

“The language of the CC&Rs governs if it is clear and explicit, and we interpret the words in their ordinary and popular sense unless a contrary intent is shown.” (*Id.*, citing *Franklin v. Marie Antoinette Condominium Owners Assn.* (1993) 19 Cal.App.4th 824, 829; Civil Code Section 1644)

“If an instrument is capable of two different reasonable interpretations, the instrument is ambiguous.” (*Id.*, citing *Badie v. Bank of America* (1998) 67 Cal.PP.4TH 779, 798)

“In that instance, we interpret the CC&Rs to make them lawful, operative, definite, reasonable and capable of being carried into effect, and must avoid an interpretation that would make them harsh, unjust or inequitable.” (*Id.* At 817-818, citing Civil Code Section 1643)

2. Judicial Deference Rule.

The Appellate Court held that the *Lamden* judicial deference rule applies because the CC&RS provided the Board with the authority and discretion to allow fourth floor homeowners to use, under certain conditions, portions of the common area for storage, as follows:

CC&Rs allowed the Board to designate storage areas in common area (Article IV, Section 11)

CC&Rs gave the Board authority and discretion to allow an owner to exclusively use the common area, provided certain condition are met, including that the use be “nominal” and not “unreasonably interfere with any other owner’s use or enjoyment of the property.” (Article IV, Section 12)

CC&Rs granted the Board the exclusive right to manage, operate and control the common area. (Article II, Sections 2 and 3)

The Appellate Court distinguished *Nahrdstedt* in that the challenged pet provision in *Nahrdstedt* did not afford the board in *Nahrdstedt* any discretion [as the CC&Rs did not afford the board in *Ekstrom v. Marquee at Monarch Beach HOA* (2008) 168 Cal.App.4th 1111], where as here, the CC&Rs provided the Board with the requisite authority and

discretion to allow fourth floor unit owners to use, under certain conditions, portions of the common area for storage.

Thus, pursuant to *Lamden*, the Appellate Court deferred “to the Board’s authority and presumed expertise regarding its sole and exclusive right to maintain, control and manage the common areas” in granting the fourth floor owners the right, under certain conditions, to use a portion of the inaccessible attic space adjacent to their units for storage. (*Harvey*, 162 Cal.App.4th at 821)

The Appellate Court found that the Board “upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members,” properly exercised its discretion within the scope of the CC&Rs. (*Id.*)

3. Conflict of Interest:

The Appellate Court found no conflict of interest in Board’s vote allowing attics be used for storage, even though several Board members were fourth floor unit owners with attics. This is because no evidence existed that the directors obtained a “material financial interest,” as required under Corporations Code Section 7233(a), when they voted in favor of the storage usage.

The Appellate Court also found that a disinterested majority of the Board approved the transaction upon full disclosure pursuant to Corporation Code Section 7233(a)(2), since three of the five unanimous votes were from directors who did not own a fourth floor unit, and that the vote was just and reasonable as required by Corporation Code Section 7233(a)(3).