

**Pacific Hills Homeowners Association v. Prun**

160 Cal.App.4<sup>th</sup> 1557 (2008)

**NOTE: Five (5) year statute of limitations for violation of restriction applies to any restriction affecting use of real property, and is not limited to recorded restrictions; defendant owners did not prove laches or waiver defense.**

**FACTS:**

Defendant homeowners installed a gate and fence across their driveway in violation of setback and height requirements of the Pacific Hills Homeowners Association's ("Association") Architectural Guidelines. Discussions between the property manager and owners about the installation of the gate/fence began in late 2000. Owners submitted architectural forms but no plans. In mid-February 2001, owners submitted plans which were disapproved as they did not comply with setback requirements. Between July 2001 through March 2003, owners were sent letters to comply and invited to attend hearings. In March 2003, Association's lawyer sent owners a letter as a "last effort" to resolve the matter, giving the owners ten days to comply. Owners spoke with Association's lawyer and were advised that the attorney would get back to the owners or the matter could be considered closed. Over a year later, in April 2004, a different lawyer for the Association sent owners a letter requesting that the matter be submitted to alternative dispute resolution ("ADR"). The owners did not respond. A year later, in March 2005, Association's lawyer sent another letter suggesting ADR. In April 2005, Association filed legal action against the owners for breach of the CC&Rs and injunctive relief.

**TRIAL COURT'S DECISION:** In favor of Association.

The Trial Court ruled in favor of Association, finding that the five (5) year statute of limitations in Section 336(b) of the Code of Civil Procedure applied and therefore, the action was timely. Furthermore, the defendant owners had not proven their affirmative defenses of estoppel, laches or waiver. The judgment ordered the owners to modify their gate and fences to comply with setback and height requirements.

**APPELLATE COURT'S DECISION:** Affirmed Trial Court.

1. **Statute of Limitations.**

The five-year Statute of Limitations per Section 336(b) of the Code of Civil Procedure is applicable to actions for violation of a restriction as defined in Civil Code Section 784, and is not limited to recorded documents. "Restriction" in Section 784 is defined as a "limitation on, or provision affecting, the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction."

The plain language of Code of Civil Procedure Section 336 and Civil Code Section 784(b) does not govern only recorded restrictions but applies to unrecorded restrictions as well, which includes architectural guidelines.

2. Laches.

Although the Appellate Court commented that it did not condone the Association's year long delays and gaps in communicating with the owners regarding the violation, the owners could not show any prejudice as a result of delay, so their laches defense failed.

3. Waiver.

The Appellate Court found that Association followed its ordinary procedures attempting to enforce setback requirements, sending letters to comply, inviting owners to hearings, imposing fines, and eventually filing suit.

“When a homeowners’ association seeks to enforce the provisions of its CC&Rs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious.” (*Pacific Hills*, 160 Cal.App.4<sup>th</sup> at 1565-1566, quoting *Ironwood Owners Assn IX v. Solomon* (1986) 178 Cal.App.3d 766, 772)

“The criteria for testing the reasonableness of an exercise of such a power by an owners’ association are (1) whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments and (2) whether the power was exercised in a fair and nondiscriminatory manner.” (*Pacific Hills*, 160 Cal.App.4<sup>th</sup> at 1566, quoting *Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 683-684)