

Treo @ Kettner Homeowners Association v. Intergulf Construction Corporation

166 Cal.App.4th 1055 (September 12, 2008)

Contractual waiver of right to jury trial in CC&Rs is not enforceable.

FACTS:

The CC&Rs included a provision that required all disputes between the association, owners and Intergulf (the developer of the project) be decided by general judicial reference pursuant to Code of Civil Procedure Section 638, essentially resulting in a waiver of one's right to a jury trial. The association sued Intergulf for construction defects and Intergulf sought to have the case dismissed and decided by judicial reference (*i.e.*, an alternative means of dispute resolution by use of judicial referee).

TRIAL COURT'S DECISION: The Trial Court ruled In favor of Intergulf; case ordered to judicial reference.

APPELLATE COURT'S DECISION: The Appellate Court reversed in favor of association.

The Appellate Court found that the CC&Rs are equitable servitudes which bind and are enforceable against subsequent owners of properties in the community. The Court further found that CC&Rs can reasonably be construed as contracts and enforced as such between the association and owners. However, the Court held that "treating the CC&Rs as a contract such that they are sufficient to waive the right to a trial by jury does not comport with the importance of the right waived." (Id. at 17-18) Accordingly, the Court concluded that the developer-written requirement that all disputes between owners and developer or the association be decided by judicial reference is not a written contract as intended by the Legislature in the context of Code of Civil Procedure 638, which governs judicial reference matters.

COMMENT: Based upon this case, a mandatory arbitration provision, which in essence constitutes a waiver of one's right to a jury trial, in an association's CC&Rs, will likely not be enforceable and binding as between the association and developer and association and owner, as well.