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SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA
PITTSBURG COURT

DISCOVERY BAY PROPERTY OWNERS) No. PSC06-0650
ASSOCIATION,)
Plaintiff,) DECISION
Vs.)
BETTY GRACE,)
Defendant.)

The above-entitled case came regularly before the court and was submitted for decision on October 30, 2006. The court heard testimony of witnesses and received documentary evidence, and having considered all evidence and the arguments of the parties finds as follows:

The plaintiff Homeowners Association points to cases which, in the past, have ruled in favor of the existence of the association and the validity of the CCRs. Although they are not quite the level of precedence desired by plaintiff, they are informative and useful to this court. A review of those cases shows that the decision in each case was driven by fact as opposed to law. There is no blanket legal decision that encompasses all factual situations in these cases.

1 This court agrees with prior decisions that have found, for
2 example, that a member may not resign from the association, and
3 that the CCRs are valid. Also, there is little doubt that the
4 association is a useful and effective tool for maintaining a
5 quality of life in Discovery Bay. The court also agrees with
6 plaintiff that defendant needs to paint the property, both for
7 the benefit of the other owners and for the protection of her own
8 investment. The issue presented here, however, is whether this
9 defendant is a member of and subject to the rules of the
10 association.

11 The testimony and briefs filed by both parties establishes
12 that defendant purchased the property in 1980 under the original
13 CCRs that specified that there would be no mandatory membership
14 requirement in a HOA. Since this is not a "common interest
15 development" under the Davis-Sterling Act, she is not bound by
16 the formation of the association. She never chose to join the
17 association and the court is not persuaded that she is required
18 to do so. As a result, the facts establish to this court's
19 satisfaction that she is not a member and is not subject to the
20 rules of the association.

21 This ruling on membership does not end the matter. In a
22 small claims case, the pleadings are not required to be specific
23 to the area of law encompassed, only to the request for monetary
24 damages for a civil wrong. Contrary to defendant's assertion,
25 damages may include punitive damages when the evidence reaches
26 the standard of "clear and convincing".

27 The facts of this case raise a question of whether the
28 condition of her property creates a public or private nuisance.

1 Without going into a lengthy analysis, which is not required in a
2 small claims case, this court finds that the evidence establishes
3 a private nuisance as to the other homeowners, and that
4 plaintiff, as a representative of the homeowners, is entitled to
5 relief.

6 Therefore the court orders as follows:

- 7 1. Defendant is not and never has been a member of
8 the association. She is not obligated to pay
9 dues, and any lien placed for the purpose of
10 collecting them is invalid. The court also finds
11 that the placing of a lien was not malicious,
12 merely incorrect.
- 13 2. The condition of defendant's property creates a
14 private nuisance, to the damage of other
15 homeowners as represented by plaintiff.
- 16 3. The court awards monetary damages from defendant
17 to plaintiff in the amount of \$500.00, plus costs
18 of \$95.00. In the alternative to paying the award
19 of \$500.00, defendant may cause her home to be
20 painted in accordance to the existing schemes
21 common to the development, to be completed no
22 later than March 1, 2007.
- 23 4. Based on the evidence produced at trial, painting
24 the trim, which has gone to bare wood, will meet
25 the requirements of this order. The court notes
26 that a full repainting may be needed and is
27 strongly recommended but, not required on this
28 evidence.

Dated: November 7, 2006



LOWELL E. RICHARDS
Court Commissioner

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