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FILED

7/13/94
STEPHEN WEBER, COUNTY CLERK
CONTRA COSTA COUNTY

By *L. NORD*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

JAMES HALL and LINDA HALL,
Plaintiffs,

vs.

DISCOVERY BAY, et al.,
Defendants.

NO. C88-01776

STATEMENT OF
INTENDED DECISION
(CCP 632; CRC 232)

A number of issues are presented by the parties in this declaratory relief/quiet title action. Two are decided rendering the others moot.

The first issue centers on the interpretation of Article LVI entitled "Duration of Restrictions" found on page 25 of the 1971 CC&R's (Joint Exhibit 1). Plaintiffs contend that the language providing for extension of the CC&R's "...by recordation of an appropriate agreement executed by the owners of at least two-thirds (2/3) of the lots..." requires that the recorded "appropriate agreement" itself be signed by the lot owners. Despite the apparent plain meaning of the quoted language, the association's trial brief argued that such a procedure was never intended because it would be unduly burdensome and costly. The association's post-trial brief, however, takes a different tack--it now seems to concede plaintiffs' interpretation but contends that the procedure

1 followed was authorized by Civil Code Section 1355(a), a part of
2 the Davis-Sterling Common Interest Development Act enacted in
3 1985. The plaintiffs point out, however, that there is no
4 evidence the act applies. Under Civil Code Section 1352 the
5 act applies only when "...a separate interest coupled with an
6 interest in the common area or membership in the association is
7 or has been, conveyed...." Neither prerequisite has been
8 established. It thus becomes clear that, as to Tract 4077, the
9 "old" CC&R's were never effectively amended by replacement with
10 the "new" CC&R's.

11 In addition to the foregoing ground for invalidating
12 the "new" CC&R's, there is a second ground upon which the
13 adoption process must be declared defective. Apart from the
14 failure of the certificate of approval forms to physically
15 attach that which it purports to incorporate by reference (i.e.,
16 the "new" CC&R's), there are 22 of the 68 forms on which the
17 "old" CC&R's are misidentified. Even the misidentifications
18 vary. The 22 consent forms refer to the "amendment" by
19 "replacement" of CC&R's incorrectly identified by reference to
20 date and page of recording with the county recorder. The
21 association seeks to trivialize this defect by describing it as
22 a "technical misreference" which should not cause the consents
23 to be invalidated. It also argues that, since the stipulated
24 evidence is that "there is no information and thus no contention
25 that any property owner who signed a consent was misled...", the
26 mistaken reference was harmless.

27 While there is no direct or analogous authority on
28 this issue to which the Court's attention has been directed, it
29 seems fundamental that interests in real property are not to be
30 granted or restrictions on real property involuntarily imposed
31 by such slipshod methods as were employed in this case. The
32 Court finds the 22 consents fatally defective on their face.

