

**FILED**

**MAY 13 2004**

**K. TORRE CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
MARY SLATER**

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

**GUSTAVE and MIRIAM MEYNER,**

**No. C02-03118**

**Plaintiffs,**

**vs.**

**Statement of Decision  
following Trial**

**DISCOVERY BAY PROPERTY OWNERS  
ASSOCIATION, INC., RICHARD KIER,  
J. DORAN, B. MORFORD, R. BALLARD,  
J. TEMPLETON, H. HERMAN, R. BREHMER,**

**Defendants**

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Following the issuance of the court's tentative decision, plaintiffs filed certain objections thereto. Defendants responded. The Court concludes following a review of those filings that its tentative ruling is correct and adopts it as its final Statement of Decision:

Plaintiffs purchased their property at Discovery Bay in June of 1990. At that time there was recorded in the office of the county recorder certain "Covenants, Conditions and Restrictions" [herein "the CCRs"] which purported to effect the property. Certain disputes have arisen between the plaintiffs and the Discovery Bay Property Owners

Association, and the plaintiffs bring this action with relation thereto.

The amended complaint consists of five causes of action. On January 7, 2004, the defendants' motion for summary adjudication was granted as to the first cause of action (cancellation of the CCRs recorded on December 31, 1987) and the fifth cause of action (continuing nuisance). Trial commenced upon the remaining causes of action on February 9, 2004.

### Second Cause of Action

This cause of action seeks to cancel any "liens" that have been recorded as against the plaintiffs' property by Discovery Bay Property Owners Association [herein "the association"] pursuant to the CCRs. The essence of the allegations of the complaint is that the liens are void because the CCRs are void. As previously indicated, summary adjudication has been ordered in favor of defendants as to that issue. Further, plaintiffs have not established, at trial, any invalidity as to the recorded CCRs.

The last sentence of the cause of action, however, alleges that the lien "is void because Defendants were without authority to assess costs and fees against Plaintiffs. At trial the Court allowed plaintiffs to construe this allegation broadly and raise various claims as to the validity of any liens, discussed as follows.

1. Plaintiffs presented evidence that they purchased their home "on the condition" that they would not be members of a homeowners association. This does not, however, effect the encumbrance of the CCRs. Firstly, any agreement that they *that seller is ineffective as to either the association or the other owners* covered by the mutual CCRs. Secondly, even if they were not "members" the CCRs

bind the realty whether the owner is, or is not, a member.

2. Plaintiffs urge that they resigned their membership in the association. This issue involves two separate questions: whether under the applicable documents any owner is free to resign membership and, if so, whether the plaintiffs have effectively done so. As to the latter the evidence supports a finding that the plaintiffs did make every effort that could be made to resign (see, for instance, Exhibit 7).

The CCRs do not allow for resignation. Rather, they provide in Article 1.2 that "all Discovery Bay Property Owners are automatically members of the Association for as long as they own the property". The CCRs recognize, however, that the association shall have "Bylaws", stating in the same article that voting shall be as set forth in the Bylaws and that assessments "if unpaid as stipulated in the bylaws" shall constitute a lien against the subject property.

Plaintiffs offer into evidence a set of Bylaws purporting to be in effect from the time of their purchase until May 5, 2000, when they were amended. As far as is relevant to the current issue, the following terms are contained in that document:

**"Section 4. Termination of Membership.** Membership in this corporation shall terminate on the death of the member or on his ceasing to be a beneficial owner of the property within the defined area or on his failure to pay the annual dues."

**"Section 5. Dues.**

....  
(c) Any member who fails to pay dues for a period of ninety days from the date on which said dues became payable, or who fails to pay any assessment in full, as hereinafter provided, on or prior to the delinquent date thereof, shall, for the purposes of voting, be considered a member not in good standing. Any member who fails to pay such dues for a period of ninety days from the date on which such dues became payable, or who fails to pay any assessment in full within ninety days after the delinquent date thereof, shall be dropped from active membership and his name

shall not be reinstated to good standing in the corporation until he has paid all dues and assessment (sic) in full from the date on which they became delinquent. All members other than those described in this paragraph are members in good standing”.

These ambiguous terms must be read in conjunction with the following provision contained in Article 1.2:

“The Association may assess its members to cover reasonable administrative expenses (i.e. elections, meetings, legal, office, printing, etc.) incurred by the Association in connection with carrying out its duties under this Declaration.”

Unquestionably a property owner may not, by simple non-payment of dues, extract himself from the obligations as to property use, maintenance, design, etc. It is equally clear that by not paying dues a homeowner is “not in good standing” and cannot vote on any issues coming before the association. The more difficult question is whether, under the language of Bylaw Section 4, his membership ends and therefore he has no further or future obligation to pay dues.

The Court concludes that all that was intended by the bylaw language was to penalize the non-payer by discontinuing his right to vote. A contrary interpretation would conflict with the CCRs. Accordingly, it is concluded that each property owning unit is a member for the purposes of dues obligations and non-payment does not cut off the obligation of making future payments or otherwise complying with the CCRs. It becomes unnecessary, therefore, to determine whether the May 2000 amendment of the bylaws, which eliminated the ambiguity by providing, consistent with the CCRs, that all owners are members, re-created an obligation to pay dues.

Further, the Court concludes that the CCR provision for unpaid dues being a lien

upon the real property is effective and that the association is authorized to enforce such liens.

3. Plaintiffs urge that the provisions of the Corporations Code as to non-profit mutual benefit corporations require that they have the right to resign and be free of any obligation to pay dues. They acknowledge that there is an exception where "membership is a condition of ownership of an interest in real property, as an obligation arising out of the ownership of an interest in real property, or otherwise". Based upon the foregoing analysis, the exception applies.

4. Plaintiffs argue that the CCRs apply on a "tract by tract" basis and that, as indicated by Exhibit 4 (entitled "Certificate of Amendment to Covenants, Conditions, & Restrictions for Subdivision 4206 of Discovery Bay" and recorded in February 1997 by plaintiff Gustave Meyner), the CCRs have been amended as they affect the tract in which their home is situated. This argument fails for two reasons. Firstly, at trial they totally failed to provide any admissible evidence that all, or even a majority, of the owners in that tract held a meeting, with notice to all owners, and voted upon such an amendment. Secondly, any such action would be invalid unless it had the approval of a majority of all owners at Discovery Bay as required by the recorded CCRs. The statute of limitations has no effect upon this conclusion; an invalid recording does not become valid because the time to file an action based thereon has expired.

For the foregoing reasons judgment upon the second cause of action shall be rendered in favor of defendants.

### Third Cause of Action

This cause of action, for slander of title, must fail as a result of the Court's conclusions as to the second cause of action. Since the right to lien for non-payment of dues exists, the recording of the lien cannot slander title.

The cause of action fails as against the individual defendants for the further reason that absolutely no evidence was presented as to their individual conduct.

### Fourth Cause of Action

This cause of action purports to seek declaratory relief that the statute of limitations bars filing or enforcement of the lien for unpaid dues because "more than five years" elapsed from the time that plaintiff Gustave Meyner recorded the purported "amendment" to the CCRs. As previously indicated, the law does not require a party to file an action to revoke every wildcard filing that occurs as to real property. As the document was, on its face, without effect, its existence does not effect the rights provided by the CCRs to lien for unpaid dues. Judgment will be entered for defendants upon this cause of action as well.

Defendants shall have judgment and recover their costs.

Dated: May 13, 2004

DAVID B. FLINN

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Judge of the Superior Court



Recording Requested By:

Return to: G. MEYNER  
4844 SOUTH POINT  
BYRON CA 94514

97 028212

RECORDED AT REQUEST OF

G. Meyner 10

FEB 20 1997

AT 3 O'CLOCK P M.  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER

FEE \$

34<sup>00</sup> pd c

Document Title(s)

CERTIFICATE OF AMENDMENT TO COVENANT,  
CONDITIONS + RESTRICTIONS FOR SUBDIVISION 4206  
OF DISCOVERY BAY.

OK  
MLW

97 028212

97 028212

Certificate of Amendment to Covenants, Conditions & Restrictions for Subdivision 4206 of Discovery Bay.

The Covenants, Conditions & Restrictions For Subdivision 4206 of Discovery Bay recorded on December 29 1987 beginning on page 676 in book 14095 in the Official Records of Contra Costa County, California provide for amendments upon the consent of the owners of a majority of the properties, however the application of this document may be invalid for subdivision 4206.

Subdivision 4206 is certain real property recorded July 6, 1972 as shown in book 148 of maps, Page 1 in the Official Records of Contra Costa County, California, modified by the creation of Subdivision 4687.

We, the property owners of tract 4206 Discovery Bay, CA 94514, declare we are no longer associated with the Discovery Bay Property Owners Association, effective the date of this recording.

The following pages are the signatures representing a majority of the properties in this declarant. All signatures were witnessed by another property owner. Owners of record were provided by the Contra Costa County property tax collector's office.

The undersigned, representing the Discovery Bay Property Owners of tract 4206, execute this certificate on behalf of the members of the Property Owners pursuant to the CC&Rs of the tract.

DISCOVERY BAY PROPERTY OWNERS OF TRACT 4206

2/19/97  
Date

Gustave H Meyner III  
Gustave H Meyner III  
Acting Chairperson

2-19-97  
Date

Christopher J Luthin  
Christopher J Luthin  
Acting Vice Chairperson

2-19-97  
Date

Bernard V Johnson  
Bernard V Johnson  
Acting Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

97 028212 No. 5907

State of California  
County of Contra Costa

On 2/19/97 before me, Yvonne Tadena, Notary Public  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Gustave H. Meyer III, Bernard V. Johnson, Chris Keith  
NAME(S) OF SIGNER(S) STEPHEN J

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Yvonne Tadena  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S)  LIMITED  GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Certificate of Amendment  
TITLE OR TYPE OF DOCUMENT

8  
NUMBER OF PAGES

2/19/97  
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

97 028212

Whereas, we have contributed dues and have not experienced a net positive benefit.

Whereas, there are no common grounds to administer.

Whereas, the assets are consistantly being depleted.

Whereas, historically, the administration has made decisions conflicting with CC&R's, State agencies, the County, Federal law, consensus of the membership and previous decisions.

Whereas, we chose to be free to conduct our affairs in a reasonable and responsible manner.

Therefore, be it resolved, we the following property owners in tract 4206 Discovery Bay, CA 94514, representing 50% + 1 of the homeowners, are here by no longer associated with the Discovery Bay Property Owners Association, effective the date of recording in Martinez, CA

#	Street address	Print owner's name(s)	Owner's signature(s)
1	4802 S.P.	Don MEDGROS	<i>[Signature]</i>
2	14838 S.P.	GENE JENNINGS	<i>[Signature]</i>
3	4838 S.P.	Betty M. Jennings	<i>[Signature]</i>
4	4969 South Pt	William J. FRANCIS	<i>[Signature]</i>
5	4969 North Pt	Marjorie R. Francis	<i>[Signature]</i>
6	4814 South Point	Susanna SABAL (Mrs)	Suzanne Sabal (Mrs)
7	4843 South Point	Deloris Luthin	<i>[Signature]</i>
8	4823 South Point	Emily Renfrie	EMILY RENFRIE
9	4843 South Pt	Christopher J. Luthin	<i>[Signature]</i>
10	15040 Double Point way	BOB BELL	<i>[Signature]</i>
11	15052 Double Point way	Cliff Piseni	<i>[Signature]</i>
12	15052 DOUBLE PTWY. E.	Earlene Piseni	<i>[Signature]</i>
13	4969 S. POINT	WILLIAM J. FRANCIS	<i>[Signature]</i>
14	4999 SO. PT. WY	CAROLYN M. GIBBS	<i>[Signature]</i>
15	4855 SO. POINT	ELEN LEBOW	<i>[Signature]</i>
16	4855 SO. POINT	DONALD LEBOW	<i>[Signature]</i>
17	4850 So. Point	BRUCE McDay	<i>[Signature]</i>
18	4814 South Point	Robin Rio	<i>[Signature]</i>
Witness	<i>[Signature]</i>		Page 1 of 9 pages

