2002 07 20 CC 1354 CC&R's enforceable unless unreasonable.doc

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and Board of Directors Park Mediterrania HOA
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Subject: CC 1354 CC&R's enforceable unless unreasonable

To Whom It May Concern: 7/20/02

In my letter dated 5/02/02 with the subject: "Request either a waiver for my newly installed security door or $536.70 reimbursement for costs of uninstalling security door," I requested a waiver as my not having "...the Association's approved model of screen door" was the fault of your management company, Euclid Management.

I have made a **good faith** effort to acquire a copy of the Governing Documents from Euclid. So knowing what the documents contain, I could comply with them. I have made several attempts to get the documents and I have read what I have received from the escrow company. One day during the last week of April of this year, I went to the County of San Bernardino, Hall of Records, Land Records and discovered that the documents I received after escrow closed, are not the CC&R's. That there is a document missing labeled: Covenants, Conditions, and Restrictions. Have still not received a copy of it. I have only received the Articles of Incorporation, Bylaws, and the Rules and Regulations. I now know the collective name for the documents are Governing Documents, not CC&R's. I requested them from the real estate agent and also the escrow company, and was told that I would receive them after escrow closed. My receipt of them was delayed due to the escrow company mailing them to the real estate company and then a new clerk there forwarding them not to today's residence address number 1097, but to the original address number 11160 Santo Antonio Dr., which was the old unincorporated county address, before the City of Colton annexed it. After moving in on July 13, 2001, and prior to receiving them from the escrow company, requested them from Euclid Management and they demanded $40 for a copy, which is an unreasonable cost to prepare and reproduce the requested items. (Another example of overcharging was Euclid Management wanting $35 for a key to the swimming pool area. For $2 I can get a spare key cut and for $35 I can buy a new lock with two keys.)

California Civil Code § 1351 states in part: As used in this title, the following terms have the following meanings:
(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

California Civil Code § 1368 states in part:
(a) (1) A copy of the governing documents of the common interest development.
(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.
(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

So how can an agent of a "nonprofit corporation or unincorporated association" justify charging more than the **"reasonable cost to prepare and reproduce the requested items"**?

To date I have made one verbal request for the Governing Documents, "requested them from Euclid Management and they demanded $40 for a copy, which is an unreasonable cost to prepare and reproduce the requested items," and **3 written requests** for the Governing Documents.

1st written request

Received a reply to my letter dated 5/02/02 with the subject: "Request either a waiver for my newly installed security door or $536.70 reimbursement for costs of uninstalling security door" with a letter dated 5/3/02 from Kathy Johnston of Euclid Management Company. In it she ignores my complaint that $40 for a copy is unreasonable cost according to California Civil Code § 1368 and mentions writing out a check but neglects to state for what amount.

2nd written request

Received a reply to my letter dated 5/14/02 with the subject: "Complaint about poor customer service from Kathy Johnston, Association Administrator," with a letter dated 6/11/02 from Dana Mathey, Division Manager of Euclid Management Company. In my 5/14/02 letter I again mention Kathy's 5/3/02 letter ignores my complaint that $40 for a copy is unreasonable cost according to California Civil Code § 1368 and mentions writing out a check but neglects to state for what amount. So I was surprised that Dana Mathey's reply states, "After reviewing the correspondence from Kathy Johnston, I found that your requests had been taken care of. This was also stated in your letter to Mr. Gray," when all of my requests were not taken care of and I am not aware of stating that they all were taken care of in my letter to Mr. Gray.

3rd written request

So after 2 failed written requests wrote and mailed letter dated 7/15/02 with the subject: "3rd written request for governing documents." So the California Civil Code § 1368 (d) phrase "willfully violates this section" apparently describes Euclid Management Company and the Board of Directors Park Mediterrania HOA.

So I have made a **good faith** effort to acquire a copy of the Governing Documents from Euclid.

In my letter dated 5/02/02 with the subject: "Request either a waiver for my newly installed security door or $536.70 reimbursement for costs of uninstalling security door," I also requested a waiver due to the fact that the board apparently has approved many other waivers in the past as indicated by walking around the complex and noticing the many changes done since it was built.

For example saw one unit on the front row of the complex with a patio cover so large; attached to two garages, it must have needed a building permit. Nearby even saw 2 gray garage doors, not the Rules and Regulations "Guidelines for Architectural Improvements" uniform color of dark brown. One of the gray garage doors belongs to the President of the Board of Directors of this HOA, Alex Taylor. Apparently almost all of the entry doors are the original ones, very heavy, particleboard construction with wood strips, not molding, that is suppose to create a panel door effect. This is an obsolete style and is ugly. Some of these doors have been replaced with modern panel doors. Some of the condominiums have their unit numbers on ceramic tiles embedded in the exterior stucco walls. Nearby these old entry doors are mismatched entry door light fixtures. Also nearby a lot of these old entry doors are mismatched assortment of outdoor stuff. The larger units have mismatched alley entryways to their patios including different colors of bricks, paving stones, loose stones and sidewalk style construction. Some windows even have steel bars. While walking around saw what apparently is the "Association's approved model of screen door." Do they have the strength of my Charleston Class III door? Did not see that version at Lowe's or Home Depot so could not do a strength/price comparison. Also saw a security door on one of the units different from the "approved model" and found this version at one of the home improvement stores so was able to do a comparison. Apparently it has been there a long time as I could feel rust on its bolt heads. So these are just some of the many changes made since the complex was built. So unlike some Home Owners Associations, apparently Park Mediterrania does not have a homogenous, uniform architectural theme or style that it is trying to preserve.

So I am confused about why I am sent a letter from Euclid that begins with "In order to preserve the appearance of the community and to keep the property values at their highest level, …" Obviously adding steel bars to windows and adding that large patio cover did not preserve the appearance of the community. Do we really want to preserve the appearance of the community by replacing those old entry doors with new similar ugly ones? And as to keeping the property values at their highest level, doesn't my adding an expensive security door help to do just that?

In "1300 Decomposition of Property Rights" by Jeffrey Evans Stake, Professor of Law, Indiana University School of Law, Bloomington, he writes: "Judges have refused to enforce equitable servitudes under the 'changed-conditions', 'change of conditions', 'changed-circumstances', or 'changed-neighborhood' doctrine. This doctrine says that injunctive relief will be denied if conditions in the area affected by the covenant have so changed that the covenant can no longer achieve its purpose."

In my letter dated 5/02/02 with the subject: "Request either a waiver for my newly installed security door or $536.70 reimbursement for costs of uninstalling security door," I also stated If waiver is not possible, request $536.70 reimbursement for the following costs of replacing my newly installed security door:

- $139.86 reimbursement for my time taking a day off work (1) awaiting delivery of your approved security door to replace my newly installed security door, (2) removal of my recently installed new security door and (3) installation of your approved security door.
- $257.34 reimbursement for my newly installed security door ($114.00 for purchase of Charleston security door class III, $8.84 for sales tax, $45.00 for delivery and $89.50 for basic installation).
- $89.50 reimbursement for labor costs for removal of my recently installed security door (which will be difficult due to security doors use non-removal screws).
- $25.00 reimbursement for labor costs for removal and replacing of molding (because position of screw holes of security doors will not match up).
- $25.00 reimbursement for the purchase of this molding.
  (Notice your reimbursement for my costs listed above does not include the purchase, delivery and installation of your approved security door. Also your approved security door may cost more and be inferior to my newly installed Class III security door.)

Received a reply to my letter dated 5/02/02 with the subject: "Request either a waiver for my newly installed security door or $536.70 reimbursement for costs of uninstalling security door" with a letter dated 5/3/02 from Kathy Johnston of Euclid Management Company which states in part: "2. The Board does not issue waivers on the screen doors. There is one approved screen door. You can contact Adam Verska at (909) 689-6980. He is the approved vendor for this door."

Have something dated June 1981 from Park Mediterrania Homeowners Association, which states in part on the coversheet: "1. Attached, is a partial list of the Park Mediterrania Homeowners Association Rules and Regulations." On the section titled "Guidelines for Architectural Improvements" it states in part "1. No screen doors on the front door." There is no mention of security doors. Prior to installing my security door looked around Park Mediterrania and saw no screen doors, but some security doors so I made the reasonable assumption that it was OK to install one. Went to Lowe's and Home Depot and did a strength/price comparison then choose a Charleston Class III, with the usual warranty one gets with a store purchase.

Euclid Management Company also manages Orchard Meadows Homeowners' Association. It is on Vineyard Avenue, between Arrow Route and Foothill Blvd. in Rancho Cucamonga, California and has a web site at www.orchardmeadows.com where its Rules & Regulations are posted which states "Security screen doors may be installed if plain in design." Notice unlike Park Mediterrania, there are not R&R or CC&R's restrictions limiting a homeowner to just one approved model of security door from just one approved vendor.

Why is it there is just one approved security door? Are these custom made for Park Mediterrania? Sounds expensive. Why is it there is just one approved vendor? Why give a vendor a monopoly? With a monopoly this vendor can set any price he wants. I wondered what are his qualifications to be selected as the "approved" vendor so I did some checking and found out Adam Verska does not have a business license under his name with the City of Colton, Adam Verska does not have a Fictitious Business Name statement on file with the County of San Bernardino and Adam Verska does not have a contractor's license with the State of California?

Is the Board of Directors aware the approved vendor has no contractor's license? If the Board of Directors is aware he does not have a contractor's license, why did they approve him as the only vendor to contact? Are Adam Verska and the Board of Directors aware that an unlicensed contractor must provide the purchaser with a written disclosure in B&P Code Section 7048 stating they are not licensed? In my newspaper today received a flyer from Handyman

Connection that shows their city business license I.D. number, their Contractor's license number, states they are insured and states their work is guaranteed for one year. Prefer using a vendor that appears to be legit.

Adam Verska has a phone number listed in the phone book giving an address so with the off chance it might still be that of a business, I drove by there an saw it was just a rural residence with no business sign out front. I am certain it was the correct address, because the security door on it matched the Board of Directors "approved" model. Including the dark brown paint, which clashes with the color of the house. On 7/8/02 mailed him a letter asking what are the total charges for the security door (including labor and painting), who is the manufacturer of the security door, what is the Class rating (strength) of the security door, how long is the warranty and what does the warranty cover (parts and/or labor)? Mine is a Class III with a warranty. Wonder if his even has a warranty. Have not received a reply. **(See below California Civil Code § 1354, Bernardo Villas Management Corp. v. Black (1987) 190 Cal.App.3d 153 , 235 Cal.Rptr. 509 and Portola Hills Community Assn. v. James (1992) 4 Cal.App.4th 289 , 5 Cal.Rptr.2d 580)**

On 5/28/02 went to the Board of Directors meeting place and was told the meeting would not take place because there was no quorum. I met the President of the Board of Directors, Alex Taylor, who at that time seemed nice. Even asked me to phone Kathy and nominate myself for the Board. Told him about receiving a letter about my security door not being the 'approved' model and asked him to do me a favor and look at it. He asked what color it was and I said it was still black. He said to go to Dunn-Edwards and buy some weathered brown spray paint, as it was probably just the color black that bought Kathy's attention to it. He said the Board is not concerned with the fascia facing one-way or the other. So I went to Dunn-Edwards and asked for that weathered brown spray paint, but they only had dark brown, so I got 3 cans of that and used it thinking the problem mentioned in the letter was solved.

On 6/25/02 went to the Board of Directors meeting place and was surprised by Alex Taylor's changed attitude. Apparently after receiving two fix-it notices, I should have received a notice to attend the meeting for a hearing, but Kathy had not mailed me one. Two other homeowners were there for hearings, one for a patio cover and the other one for tinted windows. He was polite to both of them stating they had 5 minutes each to talk at their hearings and then after they talked, directed Kathy to give them forms for an architectural review. But with me he was impolite and cut my 5 minutes hearing time down to more like one minute, and then did not direct Kathy to give me one of those forms for an architectural review. Apparently in my letter where I questioned how the vendor was picked really ticked him off. He said something about malfeasance that made no sense, because to be guilty of that one would have to be a public official. He did complain about the font size in my letters, that it should have been larger, so apparently after I met him on 5/28/02, he got around to reading my letters that I sent directly to his residence and did not like what I wrote. **So obviously I did not get a fair hearing.** Later during the comment section, he did not even look my way while I was complaining about having to phone the police over the neighbors partying and their attaching a used condom on the door knob of my security door. Alex just looked off to his left the whole time. He embarrassed me before the Directors and the other homeowners at the meeting. **(See below Ironwood Owners Assn. Ix v. Solomon (1986) 178 Cal.App.3d 766 , 224 Cal.Rptr. 18.)**

Some relevant California Case Law and Codes

California Civil Code § 1354
(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, **unless unreasonable**, …

In Bernardo Villas Management Corp. v. Black the restriction against parking a truck in a carport was found **unreasonable** and that it being in a carport was not aesthetically unpleasant to reasonable [190 Cal.App.3d 155] persons and did not interfere with other owners' use and enjoyment of their property. I believe that my **security door** is also "not aesthetically unpleasant to reasonable persons and" does "not interfere with other owners' use and enjoyment of their property so their restriction against it is **unreasonable**.

Bernardo Villas Management Corp. v. Black (1987) 190 Cal.App.3d 153 , 235 Cal.Rptr. 509
The condominium was subject to a declaration of covenants and restrictions which included: "**No truck**, camper, trailer, boat of any kind or other form of recreational vehicle shall be parked on the [Bernardo] Villas 6 project,

except temporarily and solely for the purposes of loading and unloading, without the prior approval of the Architectural Committee.... The carports shall be used for parking of passenger automobiles or non-powered vehicles such as bicycles, only...."
A condominium project may impose covenants and restrictions on the use or enjoyment of any portion of the common interest area. (Civ. Code, § 1353.) These covenants and restrictions become equitable servitudes, **unless unreasonable**. (Civ. Code, § 1354.) [1] Here, the trial court properly found the restriction unreasonable as applied to clean noncommercial pickup trucks. The court correctly concluded the parking of such vehicles in condominium carports **was not aesthetically unpleasant to reasonable [190 Cal.App.3d 155] persons** and **did not interfere with other owners' use and enjoyment of their property**.

In Portola Hills Community Assn. v. James the restriction against all satellite dishes was found **unreasonable**. And since the appeal from the judgment was frivolous, sanctions were assessed. I believe the Board of Directors restriction against all security doors except for its "approved" one is **unreasonable**. And for the reasons given earlier, above, making us use its "approved" vendor is **unreasonable**. I believe any lawsuit initiated by Euclid and/or Park Mediterrania about this security door with a different design would also be **frivolous.**

Portola Hills Community Assn. v. James (1992) 4 Cal.App.4th 289 , 5 Cal.Rptr.2d 580
Is a private restriction prohibiting a homeowner from installing a satellite dish in his yard unreasonable? In this case it is. Also, because the appeal from the judgment is **frivolous, sanctions** shall be assessed.
The CC&Rs "completely ban[] the use of satellite dishes in Portola Hills. [¶] 5. Separate architectural guidelines prepared bythe Portola Hills Community Association and adopted by the Board of Directors state in pertinent part as follows: [¶] '13. Satellite Dish: Absolutely no satellite dish of any nature will be acceptable on the exterior of the units or lots anywhere within the Association.
The court acknowledged the "presumption that the[] bylaws are valid, but concluded the **ban against exterior satellite dishes was unreasonable**. fn. 2 James was awarded costs, including more than $14,000 in attorney fees.

In Ironwood Owners Assn. Ix v. Solomon I am reminded of the 6/25/02 Board of Directors meeting where **I did not get a fair hearing.** The Board of Directors **did not follow its own standards and procedures**; others got their 5 minutes allotted to their hearings. My hearing was cut short. The President of the Board of Directors even directed Kathy Johnston to give those other 2 forms for an architectural review. Obviously the President of the Board of Director's impolite treatment of me was **not fair and reasonable** and it was **arbitrary and capricious.**

Ironwood Owners Assn. Ix v. Solomon (1986) 178 Cal.App.3d 766 , 224 Cal.Rptr. 18
[4a] Despite the Association's being correct in its contention the Solomons violated the CCRs by failing to submit a plan, more was required to establish its right to enforce the CCRs by mandatory injunction. fn. 5 [5] When a homeowners' association seeks to enforce the provisions of its CCRs 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.** (Cohen v. Kite Hill Community Assn. (1983) 142 Cal.App.3d 642, 650-651 [191 Cal.Rptr. 209], and cases there cited; Laguna Royale Owners Assn. v. Darger (1981) 119 Cal.App.3d 670, 683-684 [174 Cal.Rptr. 136]; cf.Pinsker v. Pacific Coast Society of Orthodontists (1974) 12 Cal.3d 541, 550 [116 Cal.Rptr. 245, 526 P.2d 253]; Lewin v. St. Joseph Hospital of Orange (1978) 82 Cal.App.3d 368, 388 [146 Cal.Rptr. 892]; also cf. Code Civ. Proc., § 1094.5.)

As in Frances T. v. Village Green Owners Assn. where the association was found **negligent** in wrongfully ordering the Plaintiff to remove her security lighting I believe the association would be found **negligent** in **ordering me to remove my security door too**, if anything happened. Being on the back row my condominium does not face other residences and therefore there is not the benefit from a watchful neighbor so it is at greater risk.

Frances T. v. Village Green Owners Assn. (1986) 42 Cal.3d 490 , 229 Cal.Rptr. 456; 723 P.2d 573
II. **Negligence** In her first cause of action plaintiff alleged that the Association and the board negligently failed to complete the investigation of lighting alternatives within a reasonable time, failed to present proposals regarding lighting alternatives to members of the Association, negligently failed to respond to the requests for additional lighting and **wrongfully ordered her to remove the lighting that she had installed**. She contends that these negligent acts and omissions were the proximate cause of her injuries. The fundamental issue here is whether

petitioners, the condominium Association and its individual directors, owed plaintiff the same duty of care as would a landlord in the traditional landlord-tenant relationship. **We conclude that plaintiff has pleaded facts sufficient to state a cause of action for negligence against both the Association and the individual directors. [42 Cal.3d 499]**
V. Conclusion We conclude that the trial court erred in sustaining the Association's and directors' demurrer to the **negligence** cause of action.

In Nahrstedt v Lakeside Village Condominium Ass'n actual notice is not required to enforce recorded use restrictions covered by § 1354 against a subsequent purchaser if the inclusion of covenants and restrictions in the declaration is **recorded with the county recorder**. Kathy Johnston has ignored my request for governing documents at a reasonable cost. I doubt **recorded with the county recorder** is any mention of only using one "approved" security door from only one "approved" vendor.

Nahrstedt v Lakeside Village Condominium Ass'n (1994) 8 Cal 4th 361, 33 Cal Rptr 2d 63, 878 P2d 1275
The express reference to "equitable servitudes" in Civ. Code, § 1354 (covenants and restrictions appearing in recorded declaration of common interest development are enforceable equitable servitudes, unless unreasonable), evidences the Legislature's intent that recorded use restrictions falling within § 1354 are to be treated as equitable servitudes. However, although under general rules governing equitable servitudes a subsequent purchaser of land subject to restrictions must have actual notice of the restrictions, actual notice is not required to enforce recorded use restrictions covered by § 1354 against a subsequent purchaser. Rather, the inclusion of covenants and restrictions in the declaration **recorded with the county recorder** provides sufficient notice to permit the enforcement of such recorded covenants and restrictions as equitable servitudes.

Receiving that demand to remove my security door was a slap in the face. I went to the effort and expense of purchasing and installing a quality security door that has improved the looks and increased the value of my unit only to receive a demand to replace it with another security door with a different decorative design. Now I'm having to waste hours of my time responding to this thoughtless letter from Euclid Management. I have been successful in U.S. District, Superior, Municipal and Small Claims Courts. The apartment complex I lived at before moving here towed my car in violation of California Vehicle Code 22658 which limits the circumstances for removal of a vehicle from private property. Received an update from the association, which included parking rules. What people fail to realize is state law supersedes apartment rental agreements and association rules so those agreements and rules have to conform to state law. The association's parking rules don't. The apartment complex unwisely choose to ignore my letters. Small Claims awarded me $5,080. **If you choose to not grant me a waiver or a reimbursement and we go before an arbitrator or judge, I feel confidant that the California Case Law and Codes quoted in this letter will allow me to prevail.**

Sincerely Yours,

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