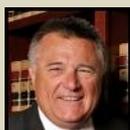




Courtside *Newsletter*

California Court Clarifies How Long HOAs Have to Enforce Restrictions



BY: JOHN V. GIARDINELLI, ATTORNEY AT LAW
CASEY MCINTOSH, PARALEGAL

The California Court of Appeal recently decided a case that could impact Homeowners Associations and their residents statewide. In Pacific Hills Homeowners Association v. Prun, et al., the Court clarified the Statute of Limitations in which a homeowners association may enforce the CC&Rs to be five (5) years from the date the violation was discovered or, through the exercise of reasonable diligence, should have been discovered.

In the instant action, Jon and Linda Prun (“the Pruns” or “Defendants”) owned a home in a planned community. The property was subject to a Declaration of Covenants, Conditions and Restrictions (CC&R's) that ran with the land and was governed by the Pacific Hills Homeowners Association (“Pacific Hills HOA,” “HOA” or “Plaintiffs”). At the time of this instant action, the Pacific Hills HOA CC&Rs “require[d] the ‘prior written approval of the Architectural Committee’ before construction of any improvement, including a ‘fence or wall’ and also mandate[d] submission of plans to the committee and its approval before construction [could] begin.” There were also Architectural Guidelines that limited fences to six (6) feet in height unless they were within 20 feet of the front property line, in which case the maximum height was three (3) feet.

In late 2000, the Pruns decided to erect a mechanical gate, including pilasters and a fence, across their driveway and in their front yard. Mr. Prun reviewed the CC&Rs and found no setback rules. (Only later did he realize that his copy of the CC&Rs only contained even-numbered pages. The setback requirements were on an odd-numbered page.) Mr. Prun also allegedly checked with Bill Scales (“Scales”), the HOA’s Architectural Administrator, and was again assured that there were no setback requirements. (At trial, Scales testified that he did not remember this conversation.)

Whilst Mr. Prun was reviewing the CC&Rs, construction on the gate began. Scales sent a letter to the Pruns, advising them that Pacific Hills HOA required approval prior to any work being done. In November, Mr. Prun completed and returned the forms he obtained from Scales, but did not include the necessary plans. In January 2001, Pacific Hills HOA again sent a letter to the Pruns requesting plans. The Pruns re-submitted their application, only including a drawing of the gate without specifications. Again, it was disapproved and Pacific Hills HOA requested the Pruns to “[s]ubmit clear drawings.” Upon receipt of the detailed drawings of the gate, Pacific Hills HOA learned that

the gate was only three (3) feet from the property line, and over three (3) feet tall, therefore not in compliance with the setback requirements. In mid-February 2001, the HOA denied the Pruns’ application, but at this point, the gate was already completed.

Between July 2001 and March 2003, the HOA and the City of Mission Viejo sent a series of letters to the Pruns advising them of the violation and requesting that they attend board meetings to “discuss the situation.” In March 2003, the HOA’s attorney contacted the Pruns, giving them 10 days to rectify the violation or legal action would ensue. Mr. Prun spoke with the attorney who allegedly advised Mr. Prun that he would do further research and if he did not hear back from the attorney, Mr. Prun should “consider the matter closed.” The Pruns did not hear back from the attorney.

In April 2004 and April 2005, the Pruns were sent two more letters from a different attorney representing the HOA, requesting mediation. The Pruns declined and in April 2005, Pacific Hills HOA filed suit, seeking an injunction based on violation of the setback requirements. The trial court found in favor of Plaintiff, ruling that the five-year Statute of Limitations found in

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Calendar

Brown Bag

Date: June 27, 2014
 Time: 11:30 a.m. – 1:00 p.m.
 Location: Southwest Riverside County
 Association of REALTORS®

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Property Management

Date: July 16, 2014
 Time: 9:00 a.m. – 1:00 p.m.
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Changes to the RPA

Date: August 8, 2014
 Time: 10:00 a.m. – 12:00 p.m.
 1:00 p.m. – 3:00 p.m.
 Location: Pacific West Association of
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RPA

Date: September 12, 2014
 Time: 9:00 a.m. – 1:00 p.m.
 Location: Pacific West Association of
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Changes to the RPA

Date: September 12, 2014
 Time: 2:00 p.m. – 4:00 p.m.
 Location: Pacific West Association of
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Changes to the RPA

Date: September 18, 2014
 Time: 1:00 p.m. – 3:00 p.m.
 Location: Tri-Counties Association of
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California Code of Civil Procedure § 336(b) applied and thus the action was filed timely. Defendants were ordered to lower their fence, gates and pilasters to a maximum of 3 feet, or, alternatively, set them back at least 20 feet from the property line.

In their appeal, the Pruns contended that the action was not subject to the five-year statute of limitations in CCP § 336(b) but was barred by the four-year statute of limitations in CCP § 337. According to Defendants, CCP § 336(b) applies only to recorded documents and not to unrecorded rules and regulations or guidelines of HOAs.

The Court of Appeal disagreed with Defendants, stating that CCP § 336(b) “provides for a five-year statute of limitations for ‘[a]n action for violation of a restriction, as defined in Section 784 of the Civil Code.’” As defined in CC § 784, “a restriction is a limitation on the use of real property, as set out in several specified types of documents, including covenants, equitable servitudes, conditions subsequent, and negative easements, with a catchall description at the end applying to any ‘other form of restriction.’” The Court interpreted CC § 784 literally, stating, “Nothing in the language states this last category of restriction must be recorded. The fact that all enumerated documents are generally recorded does not compel such an interpretation. Had that been the intent of the Legislature, it could have easily used the language any ‘other form of recorded restriction.’”

In spite of the delay in filing the instant action, the Court of Appeal did not find that Pacific Hills HOA waived its right to enforce the guidelines, nor was the delay unreasonable. Pacific Hills HOA made its opposition to the gate clear from the moment the gate was built. The Court stated that while it did not condone such

a delay, in the instant action the law does not define it as an impediment to Plaintiff’s ability to enforce its CC&Rs.

Ultimately, the Court of Appeal agreed with the trial court, thus affirming the judgment that Defendants must either lower or relocate their gate.

In this matter, the Court held that, despite the unrecorded nature of some CC&Rs, a HOA has up to five (5) years to enforce its restrictions. This is important to take note of, especially since California is a state where many people live in communities that are governed by homeowners associations. Along that same vein, it is imperative that such homeowners ensure they have and review a full and complete copy of the CC&Rs of their HOA, and that they follow those rules and restrictions as they are set forth. Just because you already built your fence does not mean that your HOA can’t force you to move or remove it.

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