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NEW CASE LAW – 2023

Published Decisions:

Lake Lindero Homeowners Association, Inc. v. Barone - (2023) 89 Cal.App.5th 834

Significance: This is a recall case by a group of homeowners who took matters into their own hands to replace the Association's directors after the Board failed or refused to notice a special meeting election [at all or within 20 days of receiving the petition as required by law] and did not participate in the pre-election or election process. The Court of Appeal ruled that the recall election was valid, finding that the California *Corporation Code* requirements for recall of a director or Board of Directors *take precedence over* the Association's Bylaws' requirement for a majority of the *total* Association votes.

Facts: The homeowner petitioners conducted the recall election themselves to remove the Board after the existing Board took no action to conduct a special meeting election to elect directors. Defendant Barone appealed the trial court's order confirming the validity of the election, contending that (1) the election was not valid because it contravened the Association's bylaws and certain statutory provisions governing Board recall elections, and validation in this case. Because the majority of the 459 votes held by the entire membership was 230 votes, Barone contended that the trial court erred in declaring the recall election valid with only a vote of 156 homeowners in favor of the recall.

Disposition: The Court of Appeal affirmed the trial court's ruling and concluded the election *was valid* because the favorable recall vote was made by *"a majority of the votes represented and voting at a duly held meeting at which a quorum was present"*, in accordance with *Corporations Code* Sections 5034, 7222(a)(2), and 7151(e) allowing for such in a development of 50 or more units. (Please note: A majority of the *total owner membership* would be required for a community development of less than 50 units.)

Takiguchi v. Venetian Condominiums Maintenance - (2023) 90 Cal.App.5th 880

Significance. *Remote* participants who can be verified as actual owners and voters will be counted towards quorum for a Board election meeting.

Facts: A board of directors, run by an elected man owning 18 units and his appointed son seeking to stay in power, *intentionally* failed to conduct the Association's annual meeting in a proper manner so that votes could be counted, claiming there was no quorum. There was no inspector of elections present at the meeting or remotely, though one had been hired. The community manager for Venetian presided over the meeting remotely instead. The manager did not take roll, did not count the members present online or by telephone, and did not determine the number of units they represented or whether an owner of those units had already submitted a written ballot. Instead, the manager declared that quorum had not been met based on the number of ballots received by Ballot Box only. And, no minutes of the January 20th meeting were taken. A scheduled "adjourned meeting" was canceled by the father and son directors over board member Takiguchi's "no" vote and the Inspector's voiced opinion that such a cancellation would display bad faith. Takiguchi then filed a court petition against the Association seeking a court order directing Venetian to notice and hold the annual meeting and count the ballots, including those who attended the January 20 meeting *in person, by proxy, and remotely*, which would have established quorum (37 more people) when added to the ballots previously counted.

Disposition: The trial court, reviewing the election under a summary judicial remedy statute [*Corporations Code* Section 7510 (c)], granted the petition and ordered Venetian to hold the annual meeting for the purpose of counting the ballots in custody as of January 20, 2021. Venetian appealed, claiming the court overreached, and that the evidence did not support the trial court's finding that there were 37 units represented at the virtual meeting for which no written ballot had been submitted. However, the Court of Appeal ruled that substantial evidence supported the trial court's finding that there was a quorum present for a meeting of directors. The identities of the remotely attending homeowners, who had not previously voted, were confirmed under the Association bylaws by verifying that (i) at least four of the remote participants used real first and last names of known unit owners as their screen names in the meeting, (ii) one of participant's face was shown in screenshots from the meeting recording, and (iii) others were identified by those who submitted declarations authenticating the screen names and screen shots, which information was also compared to a homeowner directory at the meeting, (iii) there was no evidence that any of them were imposters. The Court noted that the Association could not fault Takiguchi for presenting the best evidence available to prove the existence of a quorum since the Association deliberately chose not to take roll, keep minutes or other records, and deliberately chose not to have the inspector of elections present, etc. Order Affirmed.

River's Side at Washington Square Homeowners Association v. Superior Court of Yolo County

(2023) 88 Cal. App. 5th 1209.

Significance: An Association may sue a developer for construction defects in *individual units* on behalf of its members *if* the Association and matter qualifies for bringing a representative action based on statute and theory of liability.

Facts: Plaintiff Association sued the original developer and other entities for construction and design defects in the units and common areas. Plaintiff alleged causes of action for violation of the Right to Repair Act, breach of implied warranty, breach of contract, intentional or negligent nondisclosure, intentional or negligent misrepresentation, and breach of fiduciary duty. Defendants demurred (legally attacked the Complaint). The Superior Court sustained the demurrer *without* leave to amend in the developer's favor, effectively ending the entire case, on the basis that the Association lacked legal standing to bring claims on behalf of members for defects in residential units.

Disposition: The Court of Appeal *reversed* the Superior Court's ruling. As to the claim based on the Right to Repair Act, the Court held that the Association *lacked* standing to sue for defects in the *individual units* because it could not meet the standing requirements of Civil Code Section 5980, but the Association *did have the standing to sue for defects in the common areas.*

However, the Association's claims for breach of contract, nondisclosure, and misrepresentation causes of action sounded like fraud, so were *not* subject to the Right to Repair Act. ["Precisely where the breach of implied warranty and breach of fiduciary duty claims fit into this equation is a question that nobody addresses and that we need not resolve", said the Court in footnote 14]. As to the "defects in the common area" portion of the breach of contract and fraud claims, Plaintiff has standing. *And as to the "defects in the individual units" portion of the claims (i.e., the "heart of this case"), Plaintiff may have standing if it can meet the requirements for bringing a representative action under section Code of Civil Procedure Section 382.* On remand, the trial court was ordered to determine whether Plaintiff meets those requirements as alleged.

North Coast Village Condominium Association v. Phillips (2023) 94 Cal.App.5th 866

Significance: (1) It did not matter that the offending party committed an act of alleged workplace violence on public property that was not considered "common area" but was near the victim's unit. The TRO statute includes "following or stalking an employee *to or from the place* of work," which sufficiently encompassed the offender, Phillips, being inches off "workplace" property on public property. (2) Even though the Board President performed some of his duties remotely from his home, he could still be considered acting in his official capacity as a board member at the time of the harassing incidents. (3) This case "should not be read to unequivocally hold that Section 527.8 [of the *Code of Civil Procedure*] applies to <u>all</u> actions involving board members or employees who live at their workplace, work from home, and

maintain irregular working hours. *How this statute is applied* in an evolving work environment is an issue the legislature will likely need to revisit."

Facts: The Association filed a workplace violence restraining order petition in support of its Board President (Anderson) and 46 other employees and board members seeking to restrain an alleged extremely belligerent and difficult homeowner resident and former Board member who had allegedly mistreated Association employees/Board member(s) by stalking, yelling racist slurs, and shouting sexually implicit commands. At the conclusion of a three-day hearing, the trial court denied the Association's request for the workplace restraining order petition. And, it granted President Anderson, individually, a civil harassment restraining order pursuant to *Code of Civil Procedure* Section 527.6, against Phillips "in the interest of judicial efficiency..." in the absence of a request to amend the pleadings by either party.

Disposition: The Court of Appeal *reversed* the trial court's rulings and remanded the case back to the trial court for a rehearing on the request for a workplace violence restraining order since that request had been denied. The Court of Appeal held that a workplace violence restraining order *could* be entered in favor of the Association against a condominium resident based on an incident in which Phillips approached Board President Anderson on the patio of his unit and shouted at him in a sexually implicit way while trying to photograph him, and later purposely walked by his patio while yelling, so that others would believe he was threatening her. The Court opined that even if the resident was standing on public versus association property and president was not acting in his official capacity at that time, *in this case, a workplace violence restraining order was proper* because the HOA President only knew Phillips from their service together on the board, his home was also his workplace, he did not have a set work schedule, and the restraining order statute's overall purpose is to allow employers a means to protect employees from harm.

As for the trial court's granting of a civil harassment restraining order against Phillips in favor of the Board President *individually*, the appellate Court ruled that the lack of sufficient notice in the petition deprived Phillips of her due process rights. Because Phillips did not have adequate notice of the amendments until the court issued its ruling after the hearing, she was considered unfairly prejudiced in her ability to defend her interests. Accordingly, the Court of Appeal reversed the trial court's order of a civil harassment restraining order in favor of Anderson as an individual.

LNSU #1 LLC v. Alta Del Mar Coastal Collection Community Assn. (2023) 94 Cal.App.5th 1050

Significance: Communicating with other Board members by email about Association business does not constitute a "board meeting". Although conducting Association business through emails is not encouraged by legal counsel for other legal/practical reasons, it is not barred by *Civil Code* Section 4910 because it is not considered taking action outside of Board Meetings. Moreover, emails between Board members or homeowners are not records required to be

produced for inspection or copied for homeowners upon request, but they can be used as unprivileged evidence in a lawsuit unless legal counsel is involved.

Facts: The Davis-Stirling Act contains a transparency law called the "Open Meeting Act" ("OMA"). Appellant Owners contended that a series of e-mails among directors on a matter of Association business to which they took issue, fit within the definition of "board meeting" in *Civil Code* Section 4090 (a), and that the Board violated the OMA in its handling of their matter by discussing HOA business via email without following proper procedures and including other homeowners.

Disposition: The Court of Appeal ruled in favor of the Association, and "concluded that a "board meeting," as defined by section 4090 (a), means a gathering of a quorum of the directors of a board of a homeowners' association at the same time and in the same physical location for the purpose of transacting any matter of Association business that is within the board's purview. By using the word "congregation," the Legislature intended that the directors come together for a common purpose. By specifying the congregation be "at the same time and place," the Legislature intended the directors simultaneously come together in one location so that they can "hear, discuss, or deliberate upon any item of business that is within the authority of the board.... By sending e-mails to one another through cyberspace, often hours or days apart and from different homes and offices, the Association's directors did *not* simultaneously gather in one location to transact board business, and therefore, they did not conduct a "board meeting" within the meaning of section 4090, (a)".

Unpublished Decisions

(These cases are included here because they are instructive and provide helpful guidance, but cannot be cited as binding or published legal authority.)

Manrodt v. Albelo (2023) WL 4557605

Significance: Frequent or constant video and photographic surveillance by an Association homeowner of another member or family for the alleged purpose of documenting *potential* rules violations without actual evidence of a violation, constitutes illegal stalking and harassment.

Facts: Defendant Albelo lived two doors down from Mrs. Manrodt, a married woman with a baby daughter. From the time she and her husband moved in, Defendant who was on the Board of Directors followed her whenever she and her family came out of the house with both a cell phone and bodycam camera. He even attempted to photograph her inside of her home, in her backyard, and "lurk[ed] about" the area waiting for her or her husband to appear. Defendant claimed he was trying to ensure they obeyed the speed limit and did not receive any improper deliveries or commit any violations which he believed they had. The trial court issued a restraining order in favor of the family for three years after the Manrodts stated they feared for their safety, and the pattern of stalking was causing them anxiety. They also alleged that

Abelo was not sending the videos to the Association for any violations and did not know what he was doing with them. Albelo was ordered not to videotape or photograph the Manrodts unless an actual violation of the rules occurred and was ordered to stay at least 10 yards away from them. Defendant Arbelo appealed the TRO ruling and argued that the restraining order violated his First Amendment free speech rights.

Disposition: The trial court's judgment was affirmed. The Court of Appeal recognized that Abelo may have had a legitimate purpose at one point, but his conduct had devolved to harassment and stalking when he was constantly filming in anticipation of a violation.

Lachtman v. Ocean Terrace Condominium Association (2023) 2023 WL 2236523

Significance: Foreseeability is key to sustain a claim of negligence. The Association's knowledge that a homeowner "had loud and raucous parties" prior to the physical attack on Plaintiff, another homeowner, did not "make it foreseeable that certain of them would criminally assault and/or batter an individual". Plaintiff's contention that issuing warnings to the Defendant offender regarding these incidents would have prevented the attack was pure "speculation and conjecture."

Facts: Plaintiff was injured in an attack by one of his neighbors and sued the condominium complex's homeowners' association and its management company, in addition to others. The Association and its management prevailed on summary judgment in the trial court based partly on the court's determination that they had no prior knowledge that the attacker was violent. Within days of the summary judgment ruling, Plaintiff claimed he discovered documents not produced before that suggested the HOA and Management did have such prior knowledge. Plaintiff moved for a new trial in light of this claimed discovery of new evidence about prior knowledge.

Disposition: Trial Court judgment affirmed.

Kramer v. Park Central Towers **2023 WL 4631333**

Significance: If unlawful assessments continue to be charged by an Association, a lawsuit will not be subject to dismissal or a statute of limitations defense based on the continuous accrual rule, meaning the increased, unlawful assessments will continue to be charged, so can be challenged.

Facts: From 1970 to 1995, the Association's CC&R's required all owners of all units, including the penthouse units which were much larger in square footage, to pay equal monthly assessments. In 1995, however, the Association amended the recorded CC&R's to require the two penthouse units to pay double the monthly fees of the other 36 units.

Nearly three years after Kramer purchased his penthouse unit and 26 years after the 1995 adoption of the amended CC&R's, Kramer sued the Association for declaratory relief, injunctive relief, and money had and received (for a refund of overpayments). Kramer alleged that the

unequal allocation of assessments under the amended CC&R's was wholly arbitrary and unreasonable, and imposed a burden on the penthouse units that far outweighed any benefit. The Association filed a demurrer attacking the Complaint, asserting that (1) the claims were barred by the statute of limitations, (2) the complaint did not state facts sufficient to constitute a cause of action, and (3) Kramer had waived and was estopped from recovery on his claims. Kramer opposed the demurrer on all grounds. The trial court sustained the demurrer without leave to amend solely on statute of limitations grounds. The court ruled that all of Kramer's claims were subject to a four-year statute of limitations, which began accruing when the 1995 amendment to the CC&R's was recorded. Therefore, the court entered a judgment of dismissal.

Disposition: The Court of Appeal disagreed that the statute of limitations barred the Complaint. It agreed with Kramer that "because the assessment is a recurring, monthly obligation, the continuous accrual rule allows him to challenge its enforceability as to any amounts which came due within the limitations period or thereafter." The Court also ruled "that Kramer's complaint did not adequately allege that the assessments on his larger penthouse unit are "unreasonable" within the meaning of *Civil Code* section 5975(a). And because this was the legal basis for all of Kramer's claims, and he failed to explain what additional facts he could allege to cure the defect by amendment, the judgment was affirmed by the Court of Appeal on this alternative ground.

Gorenberg v. Emerson Maintenance Association (2023) 2023WL 3215870

Significance: Individual Board Members must obey court orders imposed against an Association even though the individual Board members were *not named* in the lawsuit. If they do not, they may be fined and even imprisoned in cases of persistent disobedience.

Facts: A homeowner requested access to Association records and its membership list under *Civil Code* sections 5205 and 5225. The Association failed to make the records available, so the homeowner filed a petition for a writ of mandate to force the Association to comply with its statutory obligation. The trial court found in favor of the homeowner, finding he had made proper requests and was given no valid reason for the Association not making the requested documents available. Following insufficient production, the trial court granted the homeowner's motion to enforce the writ against the Association, but refused to compel the individual board members to comply because they were not named defendants in the matter.

Disposition: The Court of Appeal reversed the trial court's decision and concluded that individual members of the governing Association's Board are obligated to secure the Association's compliance with court orders and judgments. A peremptory writ commanding the *Association's performance* of certain acts requires the Board's agents and directors to perform such acts on its behalf, *whether or not* the court order *expressly* states as much. The court may, upon motion under certain circumstances for such as refusal to obey, impose a fine not exceeding one thousand dollars ($1,000) against the Board members. In case of

persistence in a refusal of obedience, the court may even order the party to be imprisoned until the writ is obeyed, all under *Code of Civil Procedure* Section 1097.

Mascaro v. Brown (2023) 2023 WL 309669

Significance: This is a neighbor to neighbor dispute in which the Court ruled that a view obstruction or a disagreement about the appearance of the trees, especially with someone who complied with HOA requests to trim the trees on several occasions, did not constitute a nuisance. Attorneys' fees are still available without pleading a breach of the CC&Rs since the alleged nuisance and injunctive relief requested arose out of the CC&Rs and the view easement created by them.

Facts: Plaintiffs owned a residence in Camarillo at the Bridlewood Planned Unit Development. They contended their view was obstructed by trees located on the Defendants' property. The CC&Rs required homeowners to trim their trees when instructed by the Association's Architectural Committee to prevent the obstruction of the views of neighboring lots. Defendant trimmed their trees on numerous occasions at the request of the Association, but Plaintiff complained that the trimming was not adequate.

Plaintiff filed a lawsuit based on nuisance and an injunction prohibiting violation of the view provision of the CC&Rs. The trial court ruled in favor of the Defendants and granted them over $132,000 in attorneys' fees out of approximately $143,000 requested. The same court noted that Defendants consistently maintained the trees in compliance with the CC&Rs, and it concluded that *neither view obstruction nor displeasure with the appearance of the trees when trimmed constituted a nuisance pursuant to California law.*

Disposition: The Court of Appeal upheld and affirmed the trial court's judgment and award of attorneys' fees. A lawsuit for nuisance and injunctive relief filed by Plaintiff did not preclude the granting of attorneys' fees to Defendants, even though no breach of the CC&Rs was claimed or asserted.

Groth v. Park III Condo (2023) 2023 WL 1877917

Significance: Although it was contradicted, legally sufficient evidence showed that racist and defamatory letters were authored and distributed by a Board President, and her acts were imputed to the Association.

Facts: An Association sued the Defendant homeowners for nuisance and breach of the CC&Rs, seeking injunctive relief, arising from offensive and profane acts of vandalism in the community mentioning the name of an Association Director. Before the lawsuit was filed, the Board President (Snook) allegedly made disparaging and offensive comments about people of color and people of foreign descent in letters with her name on the signature line. Snook denied authoring or sending the letters. Because of the letters' content, Defendants cross-complained against the Association and its President for: (1) violation of the FHA, (2) violation of FEHA, (3) violation of Unruh Civil Rights Act (against Park III only), (4) defamation, (5) breach of quiet

enjoyment, (6) private nuisance, (7) IIED, and (8) negligence. The Association and Snook filed an Anti-SLAPP motion in response, claiming that the Board President's statements and enforcement activities concerned issues relating to crime in the condominium community were protected activities. The trial court found that Snook's reports to police, filing of a DFEH complaint, and her request for a civil harassment restraining order were likewise protected activities. Although the court acknowledged that Snook denied authoring the disparaging notices, since there was conflicting evidence which the court was required to accept as true, the cross-complainants met their minimal burden, and also because there were allegations of willful misconduct (so no qualified immunity applied). The court denied the anti-SLAPP motions, and the Association and Snook appealed.

Disposition: Affirmed by Court of Appeal. "Statements contained in a DFEH complaint are protected by the litigation privilege, but the protection does not extend to defamatory statements contained in the notices disseminated to the various homeowners or "Snook's use of a racial epithet..."

Ladera Ranch Maintenance Corp. v. Tinsley 2023 WL 128613

Significance: Even though an Association may be entitled to recover its attorneys' fees under its CC&Rs in a concluded lawsuit, the fees must be reasonable relative to the claims and the complexity of the case. The Court of Appeal will reverse a fee award where it is "manifestly excessive" or "clearly wrong." Alternatively, a trial court may reduce the fees based on several factors discussed below.

Facts: This was an appeal from the court's attorney fee order in favor of the Association after a bench trial. The trial court ruled in favor of the Association on its complaint against the homeowners for alleged violations of community standards involving a large tarp they erected adjacent to their home, and their failure to replace two trees they removed from their yard. The Association also prevailed on the homeowners' cross-complaint alleging selective enforcement of neighborhood grievances. Thereafter, the Association sought attorneys' fees approaching $700,000 -- for prevailing on both the Complaint and Cross-Complaint. The trial court reduced the requested amount and awarded $585,067.30 to Plaintiff.

Disposition: The Court of Appeal reversed the attorney fee award, and ordered the matter remanded to the trial court to render findings in line with the appellate ruling. While the trial exceeded the homeowners' initial estimate of three days to eight days, the Court of Appeal found no adequate justification in the record or court order for such fees. Nothing suggested that more than 2,700 attorney hours were necessary by 11 lawyers in two law firms —to address a tarp, two trees, and a chain, nor to defend against equivalent complaints lodged by the homeowners in a cross-complaint.

In addition to using a Lodestar analysis (hourly rate multiplied by hours expended), the trial court must consider several factors because there are limits on the deference and discretion given to the trial court. The requisite factors include: "the nature of the litigation, its difficulty,

the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case. Other '"major factors"' include ""'the intricacies and importance of the litigation, the labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed." "When confronted with hundreds of pages of legal bills," however, "trial courts are not required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary."

Noel v. Collier-Key (2023) 2023 WL 2362174

Significance: Making accusatory statements about specific crimes and unethical conduct by a Board Member on a private social media account or in emails will not be considered protected free speech in the context of an Anti-SLAPP Motion to Strike if there is a reasonable probability of proving defamation.

Facts: After Defendant Collier-Key sent several derogatory email and social media messages about the Noels (Plaintiff) and their involvement in the Association, accusing them of criminal and unethical conduct, including engaging in an illegal kick-back scheme with a contractor hired to fix the Association's roads and woman beating, they sued Defendant for defamation, among other things. Defendant filed an Anti-SLAPP motion to strike the defamation cause of action, arguing the defamation claim impinged upon Defendant's constitutional free speech rights concerning public issues related to the Association's business and governance. The trial court denied Defendant's Anti-SLAPP motion, finding that the Noels had shown a reasonable probability of success on the merits of their defamation claim, even though at least some of Defendant's statements qualified as protected activity about a public issue. Defendant appealed that order.

Disposition: Affirmed on appeal.