2007 Case Law Update

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New Case Law for 2007

Subject: **Workers' Compensation**

Rule: **Homeowners association and property manager are both liable for workers' compensation when employee of unlicensed contractor is injured first day of job.**

Heiman v. Workers' Compensation Appeals Board, Uninsured Employers Benefits Trust Fund, (March 13, 2007) 2007 DJDAR 4856.

A professional property manager, hired by the homeowner association to manage the condominium property and arrange for repairs of the common areas, hired an unlicensed and uninsured contractor to install rain gutters on a condominium building and an employee of the contractor was seriously injured on the first day of the job. The property management company and its manager were deemed to be an agent of the homeowner association, which was deemed to be a separate legal entity that is liable for workers' compensation as the principal.

Subject: **Allowing Pets in a No-Pet Community is a Reasonable Accommodation**

Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission, (August 25, 2004) 121 Cal.App.4th 1578.

Two individuals living in a condominium association purchased a small dog to help alleviate the symptoms of severe depression. After being told the dog violated a covenant that did not allow small dogs, and refusing a request by the two individuals to provide reasonable accommodations by the waiving the prohibition on dogs, the plaintiffs filed a claim with the California Fair Employment and Housing Commission (FEHC) which ruled in the plaintiff's favor. On appeal, the court held with the lower court, explaining that condominium association's failure to allow companion dogs for the relief of severe depression is a violation of the California Fair Employment and Housing Act. In its opinion, the court noted that there was abundant evidence introduced at the hearing that the plaintiff's disabilities interfered with the use and enjoyment of their home, and that having a dog improved the situation.

Subject: Association Has Standing But Regulation Does Not Apply

Property Owners of Whispering Palms Inc. v. Newport Pacific Inc., (September 8, 2005) 132 Cal.App.4th 666.

A dispute arose between resident owners of two divisions of a single-family subdivision and the developer over control of association committees. When the owners sought declaratory relief to enforce the agreement voted upon by the association, the trial court held they did not have standing to sue because the regulation did not apply to standard subdivisions (those that include no commonly owned property) and only to common-interest subdivisions (those that include commonly owned property). The court of appeal determined that although an association included members from three subdivisions, it had standing to sue on behalf of the residents of two of those subdivisions. Despite this finding, the court held that a regulation under California's Subdivided Land Sales Act regulating common-interest developers' control of architectural committees did not apply to standard subdivisions.

Subject: Association Is Not Liable for Damages Sustained by Tripping Over Crack in Driveway

Cloutier v. Tannenwood Homeowner's Association, (October 27, 2005) No. G035221, Cal.App.Ct..

A 77-year-old woman sued her homeowners association after she tripped on a crack in her driveway, arguing that the association breached its duty to maintain the driveway in a safe condition. In an unpublished decision, the court determined that the less than one-inch lip that existed in the driveway constituted a trivial defect. California law imposes no duty on landowners to repair trivial defects and that a walkway defect is trivial if it poses no substantial risk of injury to a pedestrian who exercises ordinary care. In this regard, the homeowners association is not an insurer of the safety of its users. The court also looked at other factors such as the level of concealment of the crack, whether the area was well lit, and other conditions that might obstruct a pedestrian's view. After examining the totality of the circumstances, the court determined that no other factors suggested that the crack in the driveway posed a greater danger than its negligible depth. Therefore, a California appeals court upheld a trial court's opinion that failure to mend a crack in a condominium owner's driveway did not constitute negligence on the association's part but triggered the state's trivial-defect doctrine.

Subject: Association Did Not Drive Vehicles Over Easement

Hurst v. Three Springs Ranch Homeowners Association, (July 28, 2005) No. H027751, Cal.App.Ct.

A plot of land included a 33-lot residential subdivision and a 75-acre parcel that is deemed reserved common area for use by the homeowners. Access to the common area included an area with an easement for lot owners for ingress and egress to the common area. The language of the easement restricted use exclusively to pedestrian and equestrian traffic access. When an individual purchased two adjacent lots and built a fence and landscaped the area, the easement became unusable. The court interpreted the easement to mean that the association had a right to use the easement to reach the common area in order to maintain it and that the association clearly has a duty to maintain the common area. In an unpublished decision, a California appeals court ruled that an association must maintain an easement and the common area to which it provides access, but that it must do so without taking vehicles over the easement.

Subject: Letters From Association's Attorney Did not Defame Owner

Ruiz v. Harbor View Community Association, (2005) 134 Cal.App.4th 1456.

A lawyer/homeowner sued the homeowners association after receiving two letters from them. The letters were sent to the lawyer/homeowner after he was denied the opportunity to rebuild his home. The letters claimed that the lawyer/homeowner failed to let the association know that he was an attorney and that this violated his duties of his profession by concealing superior knowledge while negotiating with the architectural committee of the homeowners association. Another letter sent by the attorney from the homeowner association accused the lawyer/homeowner of stalking and intimidating the directors at their meetings and harassing the association directorship. A California appeals court ruled that letters sent to a homeowner were not defamation but were protected by a statute that encompasses speech in connection with a public interest.

Subject: Construction of Fence Constitutes Trespass

Freeman v. Mostafavi, (November 8, 2005) No. B176541, Cal.App.Ct.

An individual decided to replace an existing fence that divided his lot with his adjoining neighbor's jot with a new glass fence. The two parties agreed via email to replace the existing fence on the property division line, the new fence would ensure the neighbor's privacy, and that the neighbor would not contribute financially to the construction of the new fence. During construction of the new glass fence, some of the neighbor's trees and a chain-link fence were cut, and sprinkler-system pipes were damaged. In addition, the new fence was constructed approximately 1.6 feet inside the burdened neighbor's property boundary. The burdened neighbor sued for willful trespass and sought damages. Because that owner entered the neighbor's property and had the fence constructed without the neighbor's permission, a California appeals court ruled that construction of a fence by one neighbor on the property of another constituted trespass even though the fence was constructed in the same location as the previous fence.

Subject: Declaration Requires That Principal View Be Unobstructed

Cordan v. Kahn, (July 24, 2006) No. H029400, Cal.App.Ct.

A woman purchased a lot in a residential subdivision which was subject to a Declaration of Covenants, Conditions and Restrictions (CC&R) which provided, in part, that "...No trees or shrubs shall be planted, or permitted to grow, on any lot so as to obstruct the principal view from a neighboring lot or residence." A dispute arose when the woman's principal view was obstructed by a neighbor's trees and shrubs which obscured the principle view relating only to the adjoining neighbor's lot. At trial, the court interpreted the "principle view" to mean the view with primary importance or primary view - in this case, the view of the ocean and Point Lobos. The court found that the requirement that there be no obstruction of the primary view does not mean that there cannot be some modification of that view. In an unpublished opinion, a California appeals court affirmed a trial court's order that the undefined term "principle view" in a declaration allowed for the modification of such view so long as the principal view remained unobstructed.

Subject: Suit for Breach of Contract and Foreclosure for Failure to Pay Assessments Constitute Malicious Prosecution

Silver Lakes Association v. Dunn, (November 30, 2005) No. E036892, Cal.App.Ct.,.

A group of investors purchased a 36-acre lot in a subdivision. A dispute arose between the homeowners association of the subdivision and another party as to whether one of the lots should be assessed as a single-family residential lot or a multiple-family residential lot, the dispute was assigned to binding arbitration where it was deemed a single-family residential lot. The homeowners association then demanded the group of investors to pay assessments at the rate for multiple-family residential lots. The group of investors refused to pay these rates and the association unsuccessfully sued for breach of contract and sought to foreclose the property. Then after the group of investors looked to sell the property to a third-party developer, the association sued the group of investors on the basis that the disputed lot could not be subdivided. The group of investors filed a cross-complaint, accusing the association of malicious prosecution. In an unpublished decision, a California appeals court upheld a trial court's opinion that an association's action for breach of contract and foreclosure for failure to pay assessments constituted malicious prosecution. The court determined that the association prosecuted its cross-complaint in the first action with full knowledge that it had no merit because the dispute over assessments had previously been decided by the binding arbitration decision.

Subject: Assessments Violated Declaration

Garcia Produce LLC v. De La Fuente Business Park Owners Association, (December 9, 2005) No. D045269, Cal.App.Ct.

An owner of property in a multi-purpose industrial/commercial common-interest development park. The property was subject to a declaration of protective covenants, conditions, and restrictions (CCRs) which set forth a formula that apportions the assessment fees among owners based solely on the amount of net acreage owned by each owner. Instead of following the declaration's formula, the board adopted a two-tier system which charged five times the rate for owners of lots with public infrastructure improvements as there are for owners of lots without infrastructure. The owner sued the association and requested a declaratory ruling and injunctive relief, alleging that the two-tier system was improper and, as a matter of law, the association exceeded the authority granted by the declaration when it assessed different rates to the owners based on whether the lots had infrastructure. When injunctive relief was granted, the owner successfully motioned for a judgement on the pleadings. In an unpublished decision, a California appeals court upheld a trial court's opinion that an owner was not required to pay assessments because the assessments were allocated differently from the formula set forth in the declaration.

Subject: Former Association Member Does Not Have Standing to Enforce Declaration

Farber v. Bay View Terrace Homeowners Association, (June 30, 2006) No. G036069, Cal.App.Ct.

A woman sold her condominium to another individual. The condominium was subject to a declaration of covenants, conditions, and restrictions (CC&Rs). When the new owner moved in, he discovered damage and sought to hold the former owner financially liable for not disclosing the leaks. The former owner filed a cross-claim against the condominium association for declaratory relief and immunity. The court found that the former owner lacked standing to enforce the declaration because she was not an owner of the condominium unit. In an unreported decision, a California appeals court determined that an individual who no longer owns land in a development with reciprocal restrictions cannot enforce those restrictions in the absence of proof that the original parties to the covenants intended to allow enforcement by one who is not an owner.