2006 Case Law Update

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NEW CASE LAW FOR 2006

Subject: Allegations of Negligent Security or Breach of Implied Warranty of Quiet Enjoyment of the Premises

Andrews, et al. v. Mobile Aire Estates, (January 4, 2005) 125 Cal.App.4th 578

This case arises out of a neighbor versus neighbor fight and a subsequent lawsuit against the park management and owners for failure to keep the premises safe. The court held the park owners and managers owed no duty in negligence to protect tenants against unforeseeable battery by neighbor. However, the court also held a mobile home park resident had a contractual right to the quiet use and enjoyment of the premises pursuant to the lease agreement with the park owner. The lease, as a contract, contained an implied covenant for the quiet use and enjoyment of the premises. *The key here is understanding the courts application of the doctrine of quiet use and enjoyment arising from a contract.*

Castaneda v. Olsher, (September 7, 2005) 132 Cal.App.4th 627.

The owner of the mobile home park has a duty to take reasonable steps to increase or provide additional security and/or eliminate gang members who are causing a foreseeable risk of harm to the other tenants. Here, a stray bullet fired by a gang member struck and injured a neighbor who sued the owner of the park for negligence and premises liability. The court agreed there was a duty by the park owner as landlord and owner of the property to take additional steps to provide reasonable security to prevent foreseeable criminal acts of gang members.

Tilley v. CZ Master, (June 28, 2005) 131 Cal.App.4th 464.

This case arises out of a lawsuit by a security guard who was beat up by a party goer and sued the HOA, who he was supposed to be guarding, claiming the Association was negligent or responsible for the fight by allowing the party goer into the Association. The court held the Association has no duty to restrict access or regulate party guests within the Association and the Association was not liable as it did not retain control over the premises or create a dangerous condition or otherwise negligently supervise the contract with the security guard company. The guard also assumed the risk by contributing to the events leading up to the fight/injury.

Subject: Association May be Ordered by the Court to Pay Civil Judgment by Levying a Special Assessment

James F. O'Toole Company, Inc. v Los Angeles Kingsbury Court Owners Association, (February 3, 2005) 126 Cal.App.4th 549.

Association may be forced to levy a special or emergency assessment to satisfy a civil judgment. This case arises out of a dispute between the Association and the third party insurance adjuster who was hired by the HOA to pursue insurance proceeds arising out of damage to the project as a result of the North Ridge earthquake. Despite the insurance adjuster obtaining $1.4 million dollars in insurance proceeds for the Association, the Association refused to pay the fee to the adjuster and the adjuster sued and won a judgment. The Association claimed that its regular assessments were exempt from use to pay the judgment because they were essential to meeting the Associations expenses. The court agreed with the HOA regarding the status of regular assessments, but ordered the Association to use its emergency assessment power to levy a special or emergency assessment to pay the judgment. All (46) forty-six members of the Association were forced to pay a portion of the estimated $260,000 judgment (with interest) by way of special assessment (creating a one time assessment of approximately $5,600 per member).

Subject: Broad Language in CC&Rs May be Interpreted to Prevent View Obstruction

Zabrucky v. McAdams, (May 18, 2005) 129 Cal.App.4th 618.

Property owners sued adjoining neighbors to stop their remodel, claiming it obstructed their view in violation of the language of the CC&Rs. The CC&Rs stated that no tree, shrub, or other landscaping is to be planted or any other structure be erected that might obstruct a view. The court wrestled with the interpretation of this provision and whether it should be interpreted literally to prevent any remodel or reconstruction of any home that may obstruct any other homes view within the Association. Over dissent, the court held provisions should be interpreted reasonably by inserting the terms "unreasonably obstruct" the view from any other lot.

Subject: Association May Owe Member Attorney's Fees and Costs as Well as Cost of Repair and Damages for Failure to Maintain Common Areas Causing Toxic Mold to Develop

Arias v. Catella Townhouse Homeowners Association, Inc. (March 21, 2005) 127 Cal.App.4th 847.

Here the Association admitted it failed to maintain common areas which caused the water intrusion and resulting toxic mold damages to the member's unit. The real issue here is whether the plaintiff member was entitled to additional fees and costs after the plaintiff member rejected the Association's formal settlement offer per CCP § 998. The court said "yes" because the Association's post settlement offer payments to the member, to reimburse her for repairs, constitute part of the award for calculation of the amount of judgment. The court relied on Civil Code §1354 to award attorney fees and costs to the member.

Subject: Association May be Required to Allow a Pet as a "Reasonable Special Accommodation" for Members or Residents with Disabilities

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

In this case, two Association residents requested permission to keep a small dog in their home despite the Association's "no dogs" policy. Both residents suffered from severe depression and their respective doctors had recommended obtaining a dog in order to improve their mental health. The Appellate Court upheld a ruling by the FEHC permitting the dog as a *reasonable* "special accommodation" for these two disabled individuals, in conjunction with the California Fair Employment and Housing Act (FEHA) (California Government Code Section 12900, et seq.). The Court emphasized this holding was not an across-the-board exception for every individual in a similar situation. "Each inquiry is fact-specific and requires a case-by-case determination." In addition, the holding also noted this accommodation was in no way tied to California Civil Code §54, which covers the use of "service animals".

Subject: Associations are Likely Immune from Suit, Pursuant to Cal. Civ. Code § 846, Where the Association Permits Recreational Use of Common Area

Miller v.Weitzen (2005) 133 Cal.App.4th 732.

In this case, Miller sued both Weitzen and the Rancho Santa Fe Association to recover for injuries sustained while riding her horse on a trail maintained by the Association on Weitzen's land. The specific portion of the trail where Miller was injured was actually County owned land, but Weitzen was issued an encroachment permit to construct a driveway across the trail. Additionally, the Association received funds from the Rancho Santa Fe Riding Association, of which Miller was a member, for trial maintenance. The court found the liability exceptions to Civil Code § 846 were not applicable to either Weitzen or the Association. Weitzen's ownership interest, while only an encroachment permit, satisfied the "ownership interest" requirement for Section 846. No specific interest is required; an individual need only have *some* interest. Additionally, the court also narrowly construed the "consideration" exception to Section 846. The

"consideration" exception essentially applies only to those situations where an "entrance fee" is required, such as with an amusement park. Associations are likely covered by this immunity statute where any recreational use of common area property is permitted.

Subject: Successor-in-Interest is Responsible for All Unpaid Assessments, Even Where no Structure has Been Built on the Property.

Bear Creek Master Association v. Edwards (2005) 130 Cal.App.4th 1470.

In this case, Edwards loaned money to a developer, Bill Johnson, who failed to repay the loan or pay the assessments associated with the property purchased with the loan funds. Edwards acquired title to the property from Johnson through foreclosure after Johnson failed to repay the loan. Upon acquiring title, Edwards learned Johnson owed substantial unpaid assessments to the Association. Edwards argued for an alternate interpretation of the word "condominium"; specifically that the Association's assessments would or should not have come due until a structure was built on the property. However, the court cited Civil Code §1350, which defines a "condominium" as a separate interest in space, with no structure required. The end result was that Edwards was responsible for all past assessments because he did own a statutorily-defined condominium interest regardless of whether a structure had been built.

Subject: Defendant had to Remove a Permanent Structure, Which Violated the CC&Rs, Despite the Architectural Committee's Erroneous Approval of the Plans

Woodridge Escondido Property Owners Association v. Nielsen (2005) 130 Cal.App.4th 559.

The association's architectural committee granted Nielsen permission to construct a deck, which encroached upon a side yard easement on the neighboring property. The CC&Rs expressly prohibited the installation of any permanent structure other than irrigation systems on the easement. The association's board of directors subsequently demanded Nielsen remove the encroaching portion of the deck. The court, in affirming, concluded that the association met its burden of proof by providing photographic evidence and a declaration to show that the deck was a permanent structure within the meaning of the CC&Rs. Because the CC&Rs expressly prohibited the construction of a permanent structure, the association did not act arbitrarily in demanding the removal of the encroaching structure after the architectural committee erroneously approved it. Nielsen's argument, that the structure should have been permitted to remain in place because the architectural committee had approved the plans, failed because the committee had no grounds to approve the plans in the first place.

Subject: An Association May Be Held Liable for Inaction in Response to Complaints About Defects in Common Area, Even if the Association Has a Non-liability Waiver.

Burnett v. Chimeny Sweep (2004) 123 Cal.App.4th 1057.

Burnett leased space within a hotel, owned by Chimney Sweep, for the purposes of running a gift shop. Burnett noticed excessive moisture and mildew on the premises and notified Chimney Sweep, but no remedial action was taken. As a result, Burnett was not able to conduct business in the space and filed suit for loss of income or profit. Chimney Sweep asserted a particular provision in the lease absolved it from any liability; specifically, the lease said Chimney Sweep would not be liable, under any circumstances, for business losses. The trial court found for Chimney Sweep, but the appellate court reversed the ruling, citing *Butt v. Bertola* (1952) 110 Cal.App.2d 128 as precedent. In *Butt*, the court limited the application of such exculpatory clauses to instances of "passive" negligence, and did not include "affirmative" negligence. The court characterized Chimney Sweep's inaction as affirmative negligence because it was on notice of the moisture and mildew but took no remedial action.

Subject: Associations May be Found in Violation of the Unruh Civil Rights Act if Registered Same Sex Partners of Association Members are Denied "Family" Status and All Benefits Thereof.

Koebke v. Bernardo Heights Country Club (2005) 36 Cal.4th 824.

Over the course of almost a decade, Koebke submitted several requests to the Country Club to have "family member" benefits extended to her registered same sex partner, all of which were denied. Koebke eventually filed suit against the Club alleging impermissible marital status discrimination. The California Supreme Court determined such discrimination was a violation of the Unruh Civil Rights Act, but only after passage of the California Domestic Partner Rights and Responsibilities Act of 2003, which became effective January 1, 2005.