



Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

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Homeowners' Association CC&R's - Statute of Limitations

Philip Schuman, et al. v. Allan Ignatin, et al.

Court of Appeal, Second District (December 23, 2010)

Typically, homes in common interest developments are subject to covenants, conditions and restrictions, commonly known as CC&R's. These governing documents indicate various usage restrictions on an individual owner's rights regarding their usage of their property. This case considered a challenge to the CC&R's, and whether it was timely.

The Brentwood Hills Homeowners' Association consisted of 68 homes in Los Angeles, originally developed and subject to recorded CC&R's in 1965. At the time they were recorded, the CC&R's were intended to remain in force until January 1, 1999. In 1998, the HOA recorded an amendment to the CC&R's, signed off on by 43 of the 68 owners, indicating that the owners wished to amend the CC&R's to provide that they would remain in effect until January 1, 2009, and would automatically continue for 10 year periods thereafter unless a majority of the homeowners recorded a written agreement changing, modifying or extinguishing the CC&R's.

Allan Ignatin purchased Lot 53 in 2005. In 2007, he sought to construct a new, larger home on the lot. Several of his neighbors believed that the home would violate the CC&R's, including restrictions against new construction that would block the existing views of other homeowners. On September 10, 2007, Philip Schuman, Eric Edwards and other neighbors of Mr. Ignatin wrote to him with suggestions to abate their concerns. Ignatin responded, rejecting their suggestions and disputing that the construction would violate the CC&R's.

On October 5, 2007, Schuman filed a complaint against Ignatin seeking a declaration that the proposed construction was in violation of the CC&R's, and seeking an injunction against any construction interfering with Schuman's view. Ignatin answered by general denial and filed a cross-complaint against Schuman, Edwards and the other owners who had written to him. In

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this cross-complaint, he alleged that the homes were all "subject to recorded CC&R's," but that the construction proposed would not violate the CC&R's. Ignatin also challenged the right of the cross-defendants to enforce the CC&R's and the amendment, based on their own alleged violation of various provisions of the CC&R's.

During trial, Ignatin challenged the legitimacy of the amendment, claiming it was unenforceable and the CC&R's had thus expired on January 1, 1999. Following further hearings, the trial court ruled in a minute order that Ignatin had not waived the challenge to the CC&R's by not raising the argument earlier, and that the amendment did not extend the CC&R's, because it was not signed by all of the lot owners. The trial court ruled in Ignatin's favor on the defense of Schuman's complaint and found that all the cross-complaints were moot. All parties appealed.

The Court of Appeal held that the trial court had improperly considered Ignatin's challenge to the validity of the amendment. Citing the recent case of *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 C.A.4th 1175, the Court of Appeal held that CC&R's that are improperly enacted or amended are not void on their face, but are voidable if challenged in a timely fashion. Under Code of Civil Procedure Section 343, the statute of limitations for such challenges is 4 years. Here, the amendment to the CC&R's was enacted in 1998. Ignatin's claim of invalidity was not raised until 2008, and was thus barred by the statute of limitations.

The Court also analogized to quiet title actions. Even though Ignatin may not have had a chance to dispute the amendment on a timely basis himself, since he did not purchase the property until 8 years after the amendment, others had bought, sold, and maintained their properties based on those governing documents, and regardless of whether they were properly enacted, "the right to be free from stale claims in time comes to prevail over the right to prosecute them." This is the whole purpose behind a statute of limitations on claims such as this.

The Court went on to state that Ignatin's claim that Schuman and Edwards had themselves waived any affirmative defense of statute of limitations by not raising it in their answers to his cross-complaint was not well founded, for the simple reason that Ignatin himself had not made the challenge at the time of his cross-complaint. Rather, his own pleadings had indicated that all properties were subject to the CC&R's and the amendment.

The Court of Appeal reversed the trial court's decision and remanded the matter for trial on the underlying issues of whether the proposed construction was or was not in violation of the CC&R's.

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COMMENT

Enactments or amendments to CC&R's that are done improperly are not automatically void, but they are voidable if challenged. Any such challenge must be made within four years of the enactment or amendment or it is time barred.

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