Property Law

Dolan-king II: Fourth District Adds Another Chapter to Dispute Between Homeowner and Community Association

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In a recent opinion, the Fourth District Court of Appeal added another chapter to a dispute between a community association in Rancho Santa Fe and a homeowner within its jurisdiction. *Rancho Santa Fe Assn. v. Dolan-King* (4th Dist., January 7, 2004) 115 Cal. App. 4th 28, 8 Cal. Rptr.3d 614 ("*Dolan-King II*"). This new case, which concerns a community association's power to enforce protective covenants with respect to architectural additions, follows an earlier case relating to a dispute between the same homeowner and the same community association. See, *Dolan-King v. Rancho Santa Fe Association* (2000) 81 Cal. App. 4th 965 ("*Dolan-King I*"). *Dolan-King II* takes some lessons from its predecessor, but adds some of its own lessons to the ongoing debate between community associations and their members over residential architectural and design control and enforcement.

I. Background: *Dolan-King I*

In *Dolan-King I*, the homeowner sued the Rancho Santa Fe Association (the "Association") seeking a court declaration that the Association's rejection of her plans to build a turret-style room addition and a perimeter fence was invalid. *Dolan-King I, supra*, 81 Cal. App. 4th at 971-73. The trial court agreed with the homeowner and declared that the Association's

decision was arbitrary and an abuse of power. *Id.* at 970.

On appeal, the *Dolan-King I* court applied principles from earlier California precedent, including the California Supreme Court's decision in *Nahrstedt v. Lakeside Village Condominium Association* (1994) 8 Cal. 4th 361 and its progeny. The *Nahrstedt* decision set forth the rule of "judicial deference" to community association decision making. *Id.*, 8 Cal. 4th at 374. The *Nahrstedt* court also applied a presumption that recorded governing documents were reasonable and thus enforceable. *Id.* at 386.

Looking to the specific provisions of the Rancho Santa Fe Protective Covenant (the "Covenant") and its Residential Design Guidelines (the "Guidelines"), the *Dolan-King I* court found that the provisions at issue were enforceable. The court distinguished between recorded restrictions such as the Covenant (presumed to be reasonable) and unrecorded restrictions such as the Guidelines (reviewed under a "straight reasonableness" standard). *Dolan-King I, supra*, 81 Cal. App. 4th at 977. According to the *Dolan-King I* court, the primary difference as to how these two types of documents are treated is the impact on the "respective burdens of proof at trial". *Id.* at 979.

Like many such governing documents, the Association's Guidelines illustrated what is allowed and what is prohibited, and the Covenant provided a framework for the Association to enforce consistency in homes within its jurisdiction. *Id.* The *Dolan-King I* court found both that the Association's decisions were entitled to "judicial deference" and that the provisions at issue in both the Covenant and the Guidelines were in fact enforceable. In reaching its decision, the court stated:

> ***Maintaining a consistent and harmonious neighborhood character, one that is architecturally and artistically pleasing,***

> ***confers a benefit on the homeowners by maintaining the value of their properties.*** **Given the Covenant's unambiguous intent to insure relatively consistent architectural styles in a valuable, aesthetically appealing, high quality neighborhood for the collective benefit of the Rancho Santa Fe homeowners,** ***we conclude the Covenant's grant of broad authority and discretion in the Art Jury to apply subjective aesthetic criteria is reasonable.***

Id. at 976-77 (emphasis added).

II. *Dolan-King II:* Facts and Background

While *Dolan-King I* was on appeal, the same homeowner built an 800-foot-long wrought iron fence with posts approximately every 8 feet. This time, Dolan-King did not request or obtain permission from the Association. After a letter to the homeowner and a hearing, the Association sued for injunctive and declaratory relief to force Dolan-King to either seek the property permits from the Association or remove the fence. *Dolan-King II*, *supra*, 8 Cal. Rptr. 3d at 616-17.

At issue in *Dolan-King II* were provisions of the Covenant and the Rancho Santa Fe Regulatory Code (the "Code"). Paragraph 48 of the Covenant provides, in relevant part:

> **The building of fences, walls, and similar structures are divided into two classes: first, major construction; second, minor construction.** ***The property owner may proceed with what he definitely thinks is a minor construction without submitting plans*** **and specifications to the Art Jury as provided above, subject to the continuing jurisdiction of the Association through its Board of Directors to hear complaints against said minor construction . . .**

Id. 8 Cal. Rptr.3d at 616 (emphasis in original). Further, Section 31.0302 of the Code provides: "Fences and walls. All fences and walls shall constitute 'major construction'." *Id.* at 617.

Another subsection specified that a low-lying wood split rail fence would constitute minor construction. *Id.* Similar to the Guidelines addressed in *Dolan-King I*, the Code is unrecorded and thus subject to the "straight reasonableness" standard. *Id.* at 621.

The trial court found, as a matter of law, that the provisions of the governing documents at issue were reasonable and enforceable; at trial, the jury returned a special verdict that: (1) the fence constituted major construction; (2) the fence was not consistent with the Covenant and the Code because it was constructed without a permit; (3) the fence violated the Covenant; and (4) Dolan-King must remove the fence. *Id.* at 618, 621. The trial court also awarded the Association its attorneys' fees. *Id.* at 626.

III. *Dolan-King II:* Appellate Opinion

In *Dolan-King II*, the Fourth District Court of Appeal first distilled the applicable groundwork from *Dolan-King I* and binding precedent such as the *Nahrstedt* decision. Specifically, the court reiterated that it must apply a presumption of reasonableness to the Covenant and a "straight reasonableness" test to the Code. The court noted that an Association is required to enforce its restrictions in good faith and not in an arbitrary or capricious manner. *Id.* 8 Cal. Rptr. 3d at 619-20 (citation and quotations omitted).

The *Dolan-King II* court next addressed and upheld the trial court's finding that the governing documents were enforceable, which determination was made based on a *de novo* review because it involved an interpretation of the Covenant and the Code as a matter of law. *Id.*, at 622 (quotation omitted). The court rejected the homeowner's argument that Paragraph 48 of the Covenant provided a subjective right of the homeowner to install the fence upon a belief that it was minor construction because it failed to acknowledge that Section 31.0302 of the Code provided that all fences except for a low-lying wood fence would be classified as "major

construction." The court determined that the Association was permitted to clarify and define the Code's terms so long as it did so within the reasonableness standard. *Id.* at 622. Accordingly, the court upheld the Association's ability to enforce these standards. *Id.* at 623.

The court then looked to Dolan-King's challenge to the jury verdict. Dolan-King argued that the Association did not follow its own procedures and thus waived the right to enforce its restrictions. She also argued that she should have been permitted to introduce evidence concerning traffic and safety issues around her property. *Id.* The court quickly rejected both arguments and found support for the verdict. As to whether the Association had waived its enforcement rights, the court found that because Dolan-King had been given notice and a hearing, and that she had constructed the fence while *Dolan-King I* was on appeal, there was sufficient evidence that she had knowledge of the permit requirements for fences. *Id.* at 624-25. The court also decided that the trial court did not abuse its discretion in excluding the traffic and safety evidence because the governing documents did not provide any traffic and safety exception for obtaining a permit. *Id.* at 625.

Finally, the court upheld the award of more than $318,000 in attorneys' fees to the Association, granted pursuant to Civil Code § 1354(f). *Id.* at 626.

IV. Conclusion

Read together, *Dolan King I* and *Dolan-King II* provide an excellent road map for two classic disputes between homeowners and their community associations over architectural control. In the former, the homeowner sued after the Association rejected her request for permission; in the latter, the Association sued after the homeowner failed to request approval. In both of these cases, the court sided with the Association. As a result, community associations and their attorneys may use these decisions as heavy ammunition, but they should continue to

take heed in drafting and enforcing restrictions.

Likewise, homeowners should heed the lesson of these cases that it is better to ask for permission than for forgiveness, and that before moving to a community with stringent architectural restrictions homeowners should seriously consider whether they will have problems living with such restrictions. Homeowners should also actively engage the board of their association in a discussion of what they are requesting and why they are requesting it. Perhaps if Dolan-King had raised her traffic and safety concerns to the board, they could have agreed to a fence consistent with the governing documents and satisfactory to the homeowner.