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California Community Associations Cannot Deny
Or Reject An Architectural Application
Merely Because The Owner Failed To Obtain Prior Approval
Ironwood Owners Association IX v. Solomon

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A manager at a planned development community association we represent contacted me regarding a dispute with an owner. The board apparently was refusing to allow the owner to make a change to the common area solely because the owner had made a change without first submitting a plan and obtaining the required prior approval. I was informed that the board was refusing to provide approval as punishment for the owners' actions. And the board were doing this despite the fact that the owner had come to the them with two options that would have minimal impact on the common area and/or the aesthetics of the association, and the cost for the owner to bring the property back to its prior conditions would have been very expensive. The owner was not happy and there were some rumblings of a lawsuit. I had to tell the manager and the board that their approach was not appropriate and that there was a possibility that the association could lose if a lawsuit were to be filed.

What I describe above is not an untypical response to an owner's failure to seek prior approval for a modification. It is not the correct response and it can lead to lawsuits that associations may lose. We know this because the Court of Appeal has decided a similar case and told us that California community associations must consider the plans and approve or disapprove the proposed modification based on the usual and customary factors, such as impact on the common area, on the community, neighboring owners, etc. Board's need to show that its actions were regular, fair, and reasonable as a matter of law. Refusing to consider an owner's plans for a modification because the owner had already made the modifications without approval is not a fair or reasonable response.

In the case of *Ironwood Owners Association IX v. Solomon* [(1986) 178 Cal.App.3d 766], the Court held that the association was not entitled to a mandatory injunction on summary judgment requiring the Solomons to remove palm trees they had

planted in their yard without seeking the required prior approval. The denial was on the basis that the association did not establish that its actions were fair and reasonable as a matter of law.

An association that is seeking to enforce its governing documents must demonstrate that it has followed its own standards and procedures and that those procedures were fair and reasonable. The association must also show that the substantive decision was reasonable, not arbitrary or capricious, and made in good faith.

Here are the facts: The Solomons purchased a lot within the Ironwood in March 1979 with full notice of the CC&Rs recorded in 1978. They planted date palm trees in July 1983 without first submitting in advance a plan for the new trees with the Architectural Control Committee ("ACC") as required by the CC&Rs, and therefore did not receive a permit or approval.

Like most condominium and HOAs, the CC&Rs at Ironwood set forth the requirements and procedures for submission of plans to the ACC and the standards and procedural requirements for approval or rejection by the ACC of those plans.

The Ironwood association filed a lawsuit against the Solomons requesting that the Court issue a mandatory injunction ordering the Solomons to remove the trees. The association later filed a motion for summary judgment, a procedure for securing judgment without a trial when there are no questions of fact. The Court of Appeal determined that the Solomons were required to have submitted plans for approval to the ACC and that the trial court properly made this determination.

The Court also determined that the association's request for a mandatory injunction compelling removal of the trees was in effect a request to enforce the administrative decision of the ACC disapproving the palm trees as not meeting the standards set forth in the CC&Rs. The Court indicated that despite the association being correct in its contention that the Solomons violated the CC&Rs by failing to submit plans, that alone was not sufficient; more was required to establish Ironwood's right to require that the trees be removed by mandatory injunction.

> When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and

> reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious.

The criteria for testing the reasonableness of an exercise of such a power by an owners association are:

(1) Whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing documents, and

(2) Whether the power was exercised in a fair and nondiscriminatory manner

Using the stated criteria, the Court reviewed the actions taken by the Ironwood ACC and the board of that association. The evidence did not show and the association did not indicate that the ACC ever met to consider whether the Solomons' palm trees violated the standards of the CC&Rs. The record also provided no indication that either the board or the ACC made any findings, formal or informal, as to whether the palm trees met the standards set forth in the Declaration upon which the disapproval was apparently based. The Court determined that:

> The record as it stands discloses a manifest disregard for [the procedural] provisions; whatever decision was made does not appear to be that of the governing body or the committee designated to make the decisions; no findings of any sort bridge the analytical gap between facts and the conclusions of the decision maker, whoever that was; and the record provides no means for ascertaining what standard was employed in the decision making process.

The Court of Appeal reversed the trial court's decision. The Court determined that, on the basis of the record before it, the Ironwood association had not established that its actions were regular, fair, and reasonable as a matter of law. Therefore, the Ironwood association was not entitled to a mandatory injunction compelling the Solomons to remove the trees.

Trust me when I tell you that the *Ironwood Owners Association IX v. Solomon* Court of Appeal decision is cited in almost every architectural enforcement case we file, with the owner complaining that the association did not follow the requirements set out in association's governing documents. They are usually incorrect. However,

the owner would have a good argument if their association denied their application without showing that the ACC or board ever met to consider whether the plans and proposed modifications violated the standards of the association's CC&Rs.

So, do not deny plans solely because the owner did not obtain prior approval. Hold a hearing and fine the owner for that violation, if warranted and appropriate. And then have the plans they eventually submit reviewed and denied or approved on the usual basis and on the criteria set out in the CC&Rs or architectural rules and/or guidelines.

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