SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/28/13			DEPT. WE-J
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
G. PEREZ, CA	Deputy Sheriff	NONE	Reporter

8:30 am SC114522

RON ANTONE, ET.AL.
VS
CHARLES MALARET, ET.AL.

Plaintiff Counsel: NO APPEARANCES

Defendant Counsel:

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NATURE OF PROCEEDINGS:

COURT'S RULING AFTER COURT TRIAL:

In the above-matter heretofore submitted, the court rules as follows:

Antone v Malaret

Court's Ruling After Court Trial

BACKGROUND:

Plaintiffs filed a complaint for: (1) Injunctive Relief, and (2) Damages.

Plaintiffs, Ron Antone and Deborah Antone (collectively "Antone") are the owners of real property located at 1079 Glenhaven Dr., Pacific Palisades, CA. Plaintiffs, Simon and Malihe Halff (collectively "Halff") are the owners of real property located at 1103 Lachman Lane. Defendants, Charles and Jennifer Malaret (collectively "Malaret") are the owners of 1084 Glenhaven Dr., Pacific Palisades, CA. Plaintiffs allege that the Malarets have commenced certain construction work on the Malaret property, including the placement of a multi-ton air conditioner on the roof of their home. Plaintiffs allege that the air-conditioner obstructs their ocean views in violation of the CC&Rs. Plaintiffs request injunctive relief requiring Defendants to remove the air-conditioner from the

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roof, prohibiting Defendants from making any addition or alteration to the home that raises the height of the roof, and requiring Defendants to trim all shrubs, trees and foliage that are higher than the roofline, including a specific banana tree.

The Court finds in favor of Plaintiffs on their complaint for injunctive relief with respect to the HVAC unit. The Court finds in favor of Defendants on Plaintiffs' complaint for injunctive relief with respect to the banana tree. The Court awards no damages.

ANALYSIS:

1. HVAC unit

Plaintiffs' first cause of action seeks declaratory relief regarding the HVAC unit on Defendants' property. Defendants argue the Court should find in their favor because (1) the CC&Rs do not prohibit the HVAC unit; (2) the Zabrucky case does not permit or require the Court to re-write ¶11 of the CC&Rs; (3) regardless, the HVAC unit is reasonable.

Defendants first detail the CC&Rs, and contend that they cannot be construed to require removal of the HVAC unit. Defendants' first argument is that the CC&Rs, at ¶8, expressly permit structures up to eight feet in height, and the subject HVAC unit is only 3.5 feet tall. The provision at issue,

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however, concerns television and radio antennas. On its face, it does not concern an HVAC unit.

Defendants' second argument is that there is no provision in the CC&Rs that could be interpreted to prohibit the unit. Plaintiffs argue that ¶11 of the CC&Rs provides the basis for their lawsuit. ¶11 of the CC&Rs (which are attached as Exhibit 2 to the Declaration of Miller with the moving papers) reads as follows:

> No fences or hedges exceeding three feet in height shall be erected nor shall any structures [be] erected that may at present or in the future obstruct the view from any other parcel

Defendants argue that ¶6 defines "structure," and the HVAC unit is not a "structure" per the definition. Defendants are incorrect. ¶6 does not define structure. It only indicates that specific types of structures, such as trailers, basements, tents, etc., can be used as a residence.

The parties discuss at length the case of Zabrucky v. McAdams (2005) 129 Cal.App.4th 618, a case that is particularly helpful because it concerned the exact same CC&Rs at issue here.

In Zabrucky, the court of appeals interpreted this same provision of the Marquez Knolls CC&Rs. The

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court held that the term "any structure" was not limited to "landscape-related" structures, but applied to any structure, including the construction of an addition to an existing home. Id. at 628. The court held, however, that ¶11 could not be read to prohibit any obstruction of existing views, holding:

However, it is not reasonable to interpret the CC&Rs as prohibiting any obstruction of existing views as urged by appellants. We agree with the trial court's observation that it would have been impractical for the original drafters of the CC&Rs to have intended that no house be built which obstructed any other owner's view. Thus, we conclude it would be in keeping with the intent of the drafters of the CC Rs to read into Paragraph 11 a provision that the view may not be unreasonably obstructed, thus the sentence would read, "may at present or in the future unreasonably obstruct the view from any other lot." (Change underlined.) In Seligman, the court noted it would determine "what is reasonable or unreasonable in light of the matter and the circumstances involved." (Seligman v. Tucker, supra, 6 Cal.App.3d at p. 697, 86 Cal.Rptr. 187.) Such a provision would accord with what the architectural committee actually did when it approved of the design and location of buildings as reflected by the court's view of the development which revealed that respondents' existing home partially blocked appellants' view and various other

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homes in the tract also partially blocked other owners' views.

Id. at 629.

Zabrucky does not limit the insertion of the "unreasonable" requirement to construction on a vacant lot. In its opinion, the Court reversed and inferred the word "unreasonable" to paragraph 11 of the Marquez Knolls CC&Rs to avoid a potentially absurd result such as obtained in White v. Dorfman (1981) 116 Cal.App.3d 892, in which the trial court, in construing similar language, took it literally to mean nothing could be built on a vacant lot.

Without any authority to the contrary, the Court is bound by the interpretation of Paragraph 11 of the CC&Rs in Zabrucky v. McAdams (2005) 129 Cal. App. 4th 618. The relevant question, therefore is whether the roof-top air-conditioning unit unreasonably obstructs the Plaintiffs' views.

The Court viewed the subject property and finds that the subject HVAC unit unreasonably interferes with Plaintiffs' views. It is true that many other homes in the area have similar HVAC units. However, the Court cannot find as a matter of law that those other HVAC units do not unreasonably interfere with the view of a neighbor. In addition, the burden is on a homeowner who wishes to challenge whether an HVAC unit or other "structure" is unreasonable and

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it is likely that other homeowners have simply not desired to take on such a burden.

The Defendants argue that less than 1% of the view is obstructed by the air-conditioning unit. This may be true from a statistical perspective. However, the HVAC unit is, as Plaintiffs argue, an "eye sore" in an otherwise immaculate view. There is no case authority for the position that some particular percentage of obstruction is required in order to deem a structure "unreasonable." Defendants also attempt to analogize the HVAC unit to the chimneys that appear on other units; however, again, chimneys are not "eye sores" in the same manner that Defendants' HVAC unit is.

2. Banana/Palm Tree

The second cause of action seeks declaratory relief with respect to a banana tree (sometimes referred to by the parties as a palm tree) on Defendants' property. ¶11 of the CC&Rs prohibits landscaping that unreasonably interferes with Plaintiffs' views. Defendants provide pictures and argue that the tree does not unreasonably interfere with Plaintiffs' view, especially in light of the fact that Plaintiffs themselves have landscaping that is higher than the subject banana tree and interferes more with Plaintiffs' views than the banana tree does.

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Plaintiffs argue that, pursuant to Ekstrom v. Marquesa (2008) 168 Cal.App.4th 1111, 1113, any vegetation that is taller than the height of the rooftops must be trimmed to not higher than the height of the rooftops. Plaintiffs also rely on Ezer v. Fuchsloch (1979) 99 Cal.App.3d 849, 862 to support this position. Defendants argue that these cases applied a "reasonableness" standard, and there is nothing unreasonable about the palm tree at issue in this case.

In Ezer, the parties were located in the same subdivision at issue in this case. The plaintiffs contended the defendants' trees violated the plaintiffs' views. The trial court imposed an injunction requiring the defendants to cut their trees to roof level. The defendants appealed. The Court of Appeals affirmed. At issue was a tall pine tree (twenty-five feet) that far exceeded roof height. Notably, the Court of Appeals applied an "abuse of discretion" standard, and basically found that the trial court did not abuse its discretion in finding that the subject tree unreasonably interfered with the plaintiffs' view, and that requiring the defendants to trim it to roof height was not an abuse of discretion.

In Ekstrom, a subdivision in Dana Point was the setting for the dispute. The CC&Rs in the Dana Point development expressly required "all trees" to be trimmed to roof height. The trial court required

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the defendants to trim all of the palm trees to roof height, even though it found that such a requirement would amount to an order that most of the palm trees be removed. The Court of Appeals affirmed, noting the clear provision requiring ALL trees to be trimmed to roof height.

The CC&Rs in Ezer, and in this case, are dramatically different from those in Ekstrom. The CC&Rs in the subject development do NOT contain a restriction requiring ALL trees to be trimmed to roof height. The CC&Rs in the subject development indicate only that "no tree, shrub, or other landscaping should be planted that would at present or in the future obstruct the view from any other lot." In Ezer, the Court of Appeals found that the trial court did not abuse its discretion in determining that the 25-foot pine tree unreasonably restricted the plaintiffs' views. Notably, the Court did NOT find that the trial court would have abused its discretion had it decided the other way.

In reviewing the evidence before it, the Court finds that the banana tree does not unreasonably limit Plaintiffs' views. Notably, there are many palm trees in the subject development, some of which are on Plaintiffs' property. Palm trees are not, by nature, similar to pine trees. Requiring Defendants to "trim" the subject plan tree would be tantamount to requiring them to remove the tree. Notably, a palm tree is in no way an "eye sore," similar to an

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HVAC unit. The Court therefore finds in favor of Defendants on the issue of removal of the banana tree.

3. Affirmative Defenses

Defendants argue that the affirmative defenses of estoppel, unclean hands, and changed circumstances bar Plaintiffs' complaint. The Court finds that Defendants failed to establish facts sufficient to support any of these defenses.

Defendants' first contention is that estoppel bars the complaint. Because the Court found in favor of Defendants with respect to the palm tree, it need not visit the defense in regards to the tree. In regards to the HVAC unit, however, the evidence supports a finding that Plaintiffs have been complaining about the unit since shortly after it was erected. It is not relevant that Plaintiffs did not complain about other HVAC units or similar structures throughout the community, as there is no evidence that those other HVAC units restrict Plaintiffs' views.

Defendants' second contention is that unclean hands bar the complaint. Defendants contend Plaintiffs' property has trees in excess of the rooftop height, and therefore they cannot complain about Defendants' trees. Again, the Court has ruled in favor of Defendants on the tree issue, so the Court need not

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consider this defense as it applies to the tree. There is no evidence that Plaintiffs maintain an HVAC unit or similar structure that would create an "unclean hands" exception as it relates to the parties' properties.

Defendants' final contention is that the doctrine of changed circumstances applies. Defendants argue that, to the extent the CC&Rs can be read to support a finding that unreasonably restrictive structures, such as the subject HVAC unit, must be removed, the community has changed since the CC&Rs were adopted, such that the restriction should no longer be applied. Pursuant to Seligman (1970) 6 Cal.App.3d 691, 700, when the circumstances of a neighborhood change to the point where the alleged objectionable act is no longer considered a violation by a significant majority of the homeowners, the subject rule should no longer be enforced. Defendants contend it is common practice for homeowners in the subdivision to place HVAC units and similar structures on their rooftops, such that any restriction against doing so has been obviated. There is insufficient evidence before the Court, however, to support a finding that the other HVAC units and similar structures in the subdivision affect homeowners' views in the same manner as the subject HVAC unit.

4. Damages

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Plaintiffs' third cause of action seeks monetary damages for the HVAC unit and banana tree view obstructions. The Court finds that removal of the HVAC unit will compensate Plaintiffs for any damages they have sustained, and denies their request for recovery of monetary damages. Notably, neither party addresses the request for compensatory damages in the closing briefs.

The Plaintiffs are ordered to prepare and submit a judgment.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the
MINUTE ORDER RE RULING ON SUBMITTED MATTER
upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in SANTA MONICA, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 2/28/2013

MINUTES ENTERED
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