

ORIGINAL FILED

FEB 14 2012
LOS ANGELES
SUPERIOR COURTSUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICTTRACT 19051 HOMEOWNERS
ASSOCIATION a.k.a. CLOVERDALE,
TERRAZA, STILLWATER,
WEATHERFORD HOMEOWNERS
ASSOCIATION, *et al.*

Plaintiffs,

vs.

MAURICE KEMP, *et al.*,

Defendants.

Case No. BC 398 978

[Assigned to Hon. Richard Fruin, Dept. 15]

~~[PROPOSED]~~ AMENDED JUDGMENT
AGAINST PLAINTIFFS

Action Filed: Sept. 29, 2008

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN THAT IT IS ORDERED, ADJUDGED, AND DECREED
the final judgment in this action that was entered on June 14, 2011 for the Defendants and against
the Plaintiffs is amended as follows:

On June 14, 2011, Judgment was entered in this action for the Defendants and against the
Plaintiffs, which Judgment included the following:

On February 17, 1958, the Baldwin Hills Company ("BHC") recorded a Tract No.
19051, to subdivide a portion of Cloverdale Avenue and all of Terraza Drive in the
Baldwin Vista Area of Los Angeles into 94 single family residential lots ("Tract No.
19051"). (The legal description is TRACT NO. 19051, IN THE CITY OF LOS

1 ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP
2 RECORDED IN BOOK 628 PAGE(S) 19 TO 22, INCLUSIVE OF MAPS, IN THE
3 OFFICE OF THE COUNTY RECORDER OF SAID COUNTY).

4 On February 21, 1958, the BHC recorded Declaration of Restrictions ("DORs")
5 for Tract 19051. Paragraph 13 of the DORs provides that "all conditions" shall
6 "terminate" and be of "no further effect, legal or equitable ... on or after January 1, 2000."

7 On June 29, 1959, all of the then owners of the lots in Tract 19051 recorded an
8 Amendment to DORs.

9 On December 30, 1999, Plaintiff MARCIA BREWER recorded a document
10 entitled CERTIFICATION OF AMENDMENT TO DECLARATION OF
11 RESTRICTIONS AND AMENDMENT TO DECLARATION OF RESTRICTIONS,
12 which purported to extend the DORs to December 31, 2010.

13 On September 28, 2008, this action was filed against Defendant MAURICE
14 KEMP, who was then the alleged owner of Lot 22 of Tract 19051 (which street address is
15 4085 South Cloverdale, Los Angeles, California; Assessor Parcel No.: 5029-040-003) (the
16 "Property") to enjoin the remodeling construction on that Property. The Plaintiffs were
17 TRACT 19051 HOMEOWNERS ASSOCIATION A/K/A CLOVERDALE, TERRAZA,
18 STILLWATER, WEATHERFORD HOMEOWNERS ASSOCIATION (the "CTSW")
19 and thirty-two owners of lots in Tract 19051.

20 On November 10, 2008, Plaintiffs filed a First Amended Complaint, which
21 included as named Plaintiffs forty-eight of the lot owners in Tract 19051.

22 On November 26, 2008, Plaintiffs brought an *ex parte* application to show cause
23 why a preliminary injunction should not issue and order to shorten time. The Court, the
24 Honorable David P. Yaffe presiding, set the hearing for January 6, 2009.

25 On January 6, 2009, the Honorable David P. Yaffe denied Plaintiffs' application
26 for a preliminary injunction.

27 On February 26, 2009, Plaintiffs recorded a Notice of Pendency of Action (*lis*
28 *pendens*) in the Los Angeles County Recorder's Office.

1 On February 3, 2009, a Notice of Default was recorded by the lender for
2 Defendant KEMP's construction loan. On July 10, 2009, Defendant KEMP's counsel of
3 record, Keith Turner, Esq., brought a motion to be relieved as counsel of record because
4 Defendant KEMP had stopped defending the lawsuit because he was losing the Property
5 to foreclosure. On August 12, 2009, the Court granted Mr. Turner's motion to withdraw
6 as counsel of record for Defendant.

7 On January 25 and 28, 2010, the trial in this matter came on for hearing in
8 Department 15, the Hon. Richard L. Fruin, presiding. Present in Court were counsel of
9 record for Plaintiffs, MARCIA J. BREWER, and KEN MIFFLIN, who are also Plaintiffs.
10 Also present were Plaintiffs DAVID WINSTON and ROBERT JONES. No one appeared
11 on behalf of the Defendants. The following witnesses testified at the trial: EDWIN
12 WALKER; DAVID L. WINSTON; MARCIA J. BREWER; and KEN MIFFLIN.
13 ROBERT JONES also directly participated at the trial. Plaintiffs also introduced various
14 documents as exhibits, which were accepted as evidence.

15 On January 29, 2009, an Interlocutory Judgment was filed in this action, which
16 included the following findings:

17 A. The Declaration of Restrictions dated February 18, 1958 and recorded on
18 February 21, 1958, and the Amendment to the Declaration of Restrictions
19 Tract No. 19051 dated May 4, 1959 and recorded on June 29, 1959 were
20 properly amended to provide for an extension of the provisions of the
21 original documents until December 31, 2010 under the *Davis Stirling Act*,
22 *Civil Code* Section 1350 *et seq.* Further Tract 10951 is a planned
23 development as defined in *Civil Code* Section 1351.

24 B. The Court finds that the structure constructed on Lot 22 of Tract 10951,
25 4085 S. Cloverdale Avenue, Los Angeles, California 90008, by Defendant
26 Maurice Kemp, breaches and violates the terms and conditions of the
27 Declaration of Restrictions [because] the height of the structure
28 constructed on Lot 22, at 4085 Cloverdale Ave., Los Angeles, California

90008 is thirty-three (33) feet ...”

C. The Court's ruling with respect to bringing the subject property into conformity with the height restriction in the Declaration of Restrictions/Amendment to Declaration of Restrictions is reserved until after the Plaintiffs provide proof to the Court that the Declaration of Restrictions/Amendment to Declaration of Restrictions has been properly extended under the provisions of the *Davis Stirling Act*, Sections 1355 and 1356.

D. The matter is continued to November 1, 2010 for Plaintiffs to provide proof of the extension of the Declaration of Restrictions and the Amendment to the Declaration of Restrictions beyond their current expiration date of December 31, 2010. Upon presentation of proof of the extension, the Court will make a ruling on the specific actions the defendants will be required to take to conform the subject property to the height and other restrictions in the Declaration of Restrictions/Amendment to Declaration of Restrictions ...”

On or about March 8, 2010, ERIC YELDELL purchased the Property at a Trustee's Sale.

On September 29, 2010, YELDELL brought an *ex parte* application to intervene in this action and to vacate the Interlocutory Judgment.

On October 20, 2010, YELDELL filed a motion to intervene and vacate the Interlocutory Judgment, which was noticed for hearing on November 12, 2010. Plaintiffs' counsel requested that the hearing be continued to December 3, 2010.

On December 3, 2010, the Court granted YELDELL's motion to intervene and on its own motion issued an order to show cause to: (1) vacate the Interlocutory Judgment; (2) whether to enter judgment against plaintiffs on the evidence already presented; and (3) whether to hold a further evidentiary hearing to receive new evidence that may be offered in support of Plaintiffs' claims. The parties were offered to file and serve simultaneous

1 briefs not later than January 3, 2011 concerning those topics, and the hearing was
2 scheduled for January 7, 2011.

3 On January 3, 2011, YELDELL filed his brief for the January 7 hearing. On
4 January 5, 2011, Plaintiffs brought an *ex parte* application to continue the January 7
5 hearing and to extend the due date for their brief. The Court continued the hearing date to
6 January 21, 2011.

7 On January 21, 2011, Plaintiffs requested that the Court further continue the OSC
8 hearing. The Court continued the hearing to February 3, 2011.

9 On February 3, 2011, Plaintiffs' counsel requested an evidentiary hearing. The
10 Court ordered the evidentiary hearing for February 10, 2011, at 1:30 p.m., in Department
11 15.

12 On February 10, 2011, the parties appeared for the evidentiary hearing. Presiding
13 was the assigned Judge, the Hon. Richard L. Fruin. Appearing for Plaintiffs were their
14 counsel of record, Plaintiffs MARCIA BREWER and KEN MIFFLIN. Also appearing at
15 the hearing and representing himself at the hearing was Plaintiff ROBERT JONES.
16 Appearing for YELDELL was his counsel of record, Keith Turner, and Mr. YELDELL
17 himself was present in Court.

18 IT IS ADJUDGED, ORDERED, AND DECREED, on the basis of the evidence
19 and arguments that Plaintiffs did not establish that Tract 19051 at issue in this matter is
20 within the *Davis-Stirling Act* (Civil Code §1350, *et seq.*) and that such is the only basis
21 upon which a majority of the homeowners in Tract 19051 may enforce limitations upon
22 dissenting homeowners. that judgment is entered in favor of YELDELL.

23 IT IS FURTHER ADJUDGED, ORDERED, AND DECREED, on the basis that
24 Plaintiffs have not established Tract 19051's compliance with the *Davis-Stirling Act* and
25 are not a common interest development under the *Davis-Stirling Act*, that the attempts to
26 extend Tract 19051's declaration of restrictions recorded in 1999 and in 2010 are
27 ineffective. (Copies of the 1999 and 2010 purported amendments are attached as
28 Exhibits "A" and "B".)

1 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that
2 judgment be entered in favor of Defendant ERIC YELDELL, and against PLAINTIFFS,
3 and that Defendant ERIC YELDELL be awarded his costs in the sum of \$_____.

4 The above is amended as follows:

5 On July 1, 2011, Defendant ERIC YELDELL filed and served (pursuant to *Code of*
6 *Civil Procedure* §1032) a Memorandum of Costs, which sought total costs of \$2,853.25.

7 On August 12, 2011, Defendant ERIC YELDELL filed and served a Motion for
8 Attorney's Fees and Certain Costs pursuant to *Civil Code* §1354(c), which sought for an Order
9 awarding attorney's fees in the amount of \$63,356 and costs in the amount of \$11,442.19, and
10 \$4,950 in attorney's fees and costs for the preparation of the Motion.

11 On September 28, 2011, the Court took under submission YELDELL's motion for
12 attorney's fees as authorized under *Civil Code* section 1354(c).

13 On November 22, 2011, the Court issued its Minute Order and RULING ON
14 SUBMITTED MATTER that included:

15 "The court, before proceeding, will await a proposed form of judgment for
16 attorney's fees from defendant Yeldell, together with a brief that will provide authority
17 for imposing such a judgment and provide detail against whom under the law the
18 judgment may be levied for collection. Plaintiffs are to have 20 days from the filing of
19 such proposed judgment and brief within which to file an opposition."
20

21 After considering Yeldell's brief and Plaintiffs' opposition, the Court grants
22 YELDELL's Motion for Attorney's Fees and Costs and awards Yeldell as the prevailing party
23 the following costs and fees against the Plaintiffs named in the First Amended Complaint on
24 file in this action:

- 25 A. Statutory costs under *Code of Civil Procedure* §1032 and §1033.5 in the amount
26 of \$2,853.25.
- 27 B. Statutory attorney's fees and costs pursuant *Civil Code* §1354(c) in the amount
28 of \$79,748.19 (attorney's fees of \$63,356; costs of \$11,442.19; and \$4,950 in

1 attorney's fees and costs for the preparation of the Motion).

2 The following are the Plaintiffs listed in the First Amended Complaint against whom the
3 award of fees and costs is entered:

4 1. Tract 19051 Homeowners Association a.k.a. Cloverdale, Terraza, Stillwater,
5 Weatherford Homeowners Association (the "Association")

6 From ¶3 of First Amended Complaint:

7 2. Robert L. Jones and Kaidi Jones

8 3. David Winston and Brenda L. Winston

9 4. Pat Lang

10 5. Kenneth Mifflin and Doris Evans Mifflin

11 6. Dexter Nitta and Lynn Nitta

12 7. Steven Burr and LaDonna Burr

13 8. Sergio Bent

14 9. Edwards Butts and Diana J. Butts

15 10. Cori Grayson and Gene Grayson

16 11. Marjorie Garrison

17 12. J.S. Lehman

18 13. Fred Calloway and Eugenia Calloway

19 14. G.B. Kynard

20 15. Judy Pace

21 16. Diane Island

22 17. Quinton James and Marcia James

23 18. Marcia Brewer

24 19. Carl Potts and Elaine Potts

25 20. Eugene Collier and Dorothy Collier

26 21. Ruth Turner

27 22. Jessie Ford

28 23. Charles Dotts and Victoria Franklin Dotts

- 1 24. Charles Stewart
- 2 25. John W. Harris
- 3 26. Iona V. Goodall
- 4 27. Frank E. Phillips
- 5 28. Cora King
- 6 29. Wallace R. Vernoff
- 7 30. David Chaney
- 8 31. Rodney W. Collins
- 9 32. Tracy Lewis
- 10 33. Earnestine Jeffries
- 11 34. Jorge Dneve
- 12 35. Delphine Blish
- 13 36. Bridgett Benmosche
- 14 37. Michael Thomas
- 15 38. Floy Sims
- 16 39. Reginald Dunn
- 17 40. Gloria Potts
- 18 41. Kevin Jackson
- 19 42. Jackie Kimbrough
- 20 43. Ron Smothers and Barbara Bass
- 21 44. Albert Mayfield and Gailya Mayfield
- 22 45. Herbert Patterson
- 23 46. Dawn Sutherland
- 24 47. Greg McNair and Margaret McNair
- 25 48. Carl Christopher and Bobby Christopher
- 26 49. Ryan Jones and Lynn Jones
- 27 Pursuant to this Court's December 11, 2008 Order:
- 28 50. Alfred Brazil

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 51. Jamie Simpson
- 52. Valerie J. Tutson
- 53. Frank Williams, Jr.

DATED: Feb. 14, 2002 Richard J. Fruin
Hon. Richard L. Fruin
Judge of the Superior Court