SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 734

26STCV02044 June 23, 2026
ALIREZA RASSEKHI, et al. vs PATRICIA W. CHENG 3:15 PM

Judge: Honorable Christopher K. Lui
Judicial Assistant: Tamie Le
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter Re: Demurrer;

The Court, having taken the matter under submission on 06/12/2026 for Hearing on Demurrer - without Motion to Strike of Defendant to Complaint [Res. ID# 454089519405], now rules as follows:

- Plaintiffs allege that Defendant's structure which is being rebuilt following the Pacific Palisades wildfires will obstruct Plaintiffs' views.

- Defendant Patricia W. Cheng, Trustee of the Cheng Trust, for the benefit of Patricia W. Cheng demurs to the Complaint.

RULING

Defendant Patricia W. Cheng, Trustee of the Cheng Trust, for the benefit of Patricia W. Cheng's demurrer to the Complaint is OVERRULED as to the first and fourth causes of action and SUSTAINED with leave to amend as to the second and third causes of action.

Plaintiffs are given 30 days' leave to amend as indicated.

ANALYSIS

Demurrer

Request For Judicial Notice

Defendant requests that the Court take judicial notice of the following:

1. Order re Demurrer issued on February 21, 2023 in Suk Ha Chan v. Warren G. Tourtellotte, et al., Los Angeles Superior Case No. 21SMCV01785. A true and correct copy of

the Order is attached hereto as Exhibit 1.

2. Order re Demurrer issued on June 28, 2022 in Kresimir Emil Kadrnka v. Wesley Chu, et al., Los Angeles Superior Case No. 21SMCV01310. A true and correct copy of the Order is attached hereto as Exhibit 2.

Requests Nos. 1 and 2 are DENIED. These Superior Court orders are irrelevant to this Court's determination on demurrer. Defendant cites these orders as if they are binding or even persuasive authority. "Unpublished opinions, however, generally may not be cited or relied on in another action. (Cal. Rules of Court, rule [8.1115])" (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 290.) "[A] written trial court ruling has no precedential value. (*In re Molz* (2005) 127 Cal.App.4th 836, 845 [26 Cal. Rptr. 3d 131] ["trial court decisions, of course, have no precedential authority"].) The request for judicial notice is denied." (*Bolanos v. Superior Court* (2008) 169 Cal. App. 4th 744, 761.)

Meet and Confer

The Declaration of Jonathan J. Boustani reflects that Defendant's counsel satisfied the meet and confer requirement set forth in Code Civ. Proc. § 430.41.

Discussion

The Court has reviewed the moving, opposing and reply briefs filed by the parties, but only addresses the points which the Court deems to be material to the disposition of this motion. While Plaintiffs filed a surreply, this was unauthorized and is not permitted by code. (Code Civ. Proc. § 1005.) As such, the Court disregards the surreply in its entirety.

Defendant Patricia W. Cheng, Trustee of the Cheng Trust, for the benefit of Patricia W. Cheng demurs to the Complaint as follows:

1. First Cause of Action (Breach of the CC&Rs).

Plaintiffs allege:

> 30. Contrary to the recorded CC&Rs that would run in perpetuity with the land, Declarants could not live forever and by the terms of the CC&Rs the Architectural Committee would cease to exist on December 31, 1980. For that reason, paragraph 2 of the CC&Rs provides "[i]n the event the said

> [Architectural] committee fails to approve or disapprove a design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of said such building or making of any alterations have been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with."
>
> 31. Plaintiffs allege that paragraph 2's "or in any event" language, following by "if no suit to enjoin the erection of said such building" was meant to outlast the Architectural Committee as a means of enforcing view rights. In other words, in the absence of an Architectural Committee the only remaining means of enforcing the view rights which run with the land is to bring an action for a determination of whether a proposed construction will "detract from the view of any other lot in said tract."
>
> 32. Interpreted collectively with the language of the CC&Rs considered as a whole and the intent of the Declarants requires that this Court interpret the view obstruction / detraction language to exist independent of the Declarants, the Architectural Committee and the Homeowner's Association, placing enforcement of the view preservation language in the hands of the homeowners who must file suit to enjoin the erection or alteration of a building that detracts or obstructs their view. Indeed, it is Plaintiffs' position that the only current means of enforcing the view rights as to which there are dominant and servient estates is by private right of action.

(Complaint, ¶¶ 30 – 32.)

Following the January 2025 wildfires, Defendant Chen began the rebuilding process:

> 34. Defendant Chen's communications with MKPOA and surrounding neighbors acknowledge that 16787's rebuild includes changes in square footage and roof configuration. Plaintiffs have observed framing and roof elevations that appear materially different from, and higher than, the pre-fire structure—particularly on the downhill/ocean-facing side—creating a real and immediate risk of view obstruction.

A copy of the CC&Rs is attached as Exhibit E to the Complaint. The CC&Rs set forth in pertinent part:

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned Declarants, owners of all the lots in Tract 27432 in the County of Los Angeles, State of California, as per Map recorded in Book 787 , Pages 19-21, incl. of Maps of said County, do hereby establish the following provisions, conditions, restrictions, and covenants, upon all said lots, or any interest therein all of which shall inure to and pass with each lot and shall apply to and bind the respective successor in interest or present owner or owner's thereof, and each thereof is imposed upon all said lots as a servitude in favor of each and every other of said lots of said tract as dominant tenement or tenements, as follows, to wit:

(1) All said lots shall be known and described as residential lots, no structure shall be erected, altered, placed or permitted to remain on any building plot other than one detached single-family dwelling not to exceed one story in height and a private garage, for not more than three cars: except: where, in the judgement of the Declarant and approved by the Architectural Committee, one two story single-family dwelling may be erected where said dwelling will not detract from the view of any other lot.

(2) **No building shall be erected, placed or altered** on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been **approved in writing as to the conformity and harmony of exterior design with existing structures, in the subdivision**, and as to location of the building with respect to topography and finished ground elevation **by an Architectural Committee to be composed of**: [omitted]

In the event **the said Committee fails to approve or disapprove** a design and location within thirty (30) days after said plans and specifications have been submitted to it, **or in any event, if no suit to enjoin the erection of said such building or making of any alterations have been commenced prior to the completion thereof**, **such approval will not be required** **and** **this covenant will be deemed to have been fully complied with**. The members of said Committee shall not be entitled to any compensation for the services performed pursuant to this covenant. **Neither the Declarants**, individually, severally or jointly, **nor the architectural committee**, nor any member thereof, nor any successor member thereof, shall ever be liable because of any action they take, or fail to take, or for

> any defect in any building erected herein, or at all, as a result of these restrictions, or otherwise and the owners of said lots, and each of them agree jointly and severally to hold said declarants and said members of said architectural committee free and harmless and to indemnify them accordingly from any claims, suits, any alleged liabilities, or otherwise. The name of any contractor selected by the purchaser of any lot shall additionally be submitted to the Architectural Committee provided for herein. The architectural committee shall have the power to approve or disapprove said contractor, **in the same manner as it has power to approve or disapprove a design and location**. Additionally, the Architectural Committee shall have the power to approve or disapprove the color of any roof to be placed on any residence to be constructed. **The power and duties of such committee shall cease on or after December 31, 1980**. **Thereafter, or by previous designation by the Architectural Committee the power and duties described in this covenant shall pass to the Marquez Knolls Property Owner's Association, Inc., a California corporation, who shall thereafter exercise the same powers previously exercised by said committee until December 31, 1995**, **at such time the powers and duties exercised by said Association shall cease and determine**[1].
>
> . . .
>
> (11) No fences or hedges exceeding three feet in height shall be erected or permitted to remain between the street and the front setback line nor shall any tree, shrub or other landscaping be planted **or any structures erected that may at present or in the future obstruct the view from any other lot**, and the right of entry is reserved by the Declarants to trim any tree obstructing the view of any lot.

(Bold emphasis and underlining added.)

In *Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, the Second District construed substantially similar[2] language in the CC&Rs pertaining to tract 20305 in the same Marquez Knolls section of the Pacific Palisades involved in this lawsuit. The *Eisen* court held that the precondition of approval of design and location by the MKPOA was no longer required after the sunset date:

> **But it was paragraph 2, not paragraph 1, that required review and approval of building plans and specifications by the architectural committee as a**

condition for making alterations to an existing residence. Paragraph 2 transferred that authority to the property owners association following elimination of the architectural committee as of December 31, 1966. **After another 14 years the responsibility of the association for approving building plans ceased. Contrary to the Eisens' claim, what was eliminated as of that date was not the power to grant an exception to a prohibition on renovations, but the requirement for plan approval as a precondition for going forward with them**.

Both the majority and dissenting opinions in *Zabrucky, supra*, 129 Cal.App.4th 618 interpreted the Marquez Knolls CC&R's to permit improvements to existing residences **without preconstruction plan approval by the architectural committee or the property owners association once the sunset date in paragraph 2 had passed**. (*Id.* at pp. 624, 629 (maj. opn. of Woods, J.); *id.* at p. 631 (dis. opn. of Perluss, P. J.).) **That interpretation is supported not only by the general policy of strictly construing restrictions on the free use of land but also by language in paragraph 2 itself, which deems the condition satisfied if the committee or association failed to approve or disapprove plans within 30 days of submission. Just as the failure of the responsible entity to act would be deemed satisfaction of the condition, the absence of an entity with the authority to review and approve building plans nullifies that requirement as a precondition to proceeding with renovations and remodeling**.

This interpretation of the effect of the sunset provision in paragraph 2 is reinforced by a review of the CC&R's for two neighboring tracts in Marquez Knolls, which the Eisens have provided this court and invited us to use as interpretative aids. **In 1957 paragraph 2 of the CC&R's for tract 20179, which is otherwise substantially identical to paragraph 2 of the CC&R's for tract 20305, provided that the powers and duties of the architectural committee would cease on December 31, 1960, not quite four years later. Thereafter, the paragraph continued, "the approval described in this covenant shall not be required" unless a majority of the record owners in the subdivision appointed a representative or representatives to continue to exercise the committee's powers**.

Apparently deciding it was worthwhile to continue for a longer period the plan-approval precondition to alterations or renovations to existing residences, Marquez Knolls Inc. revised paragraph 2 in the 1962 tract 20305

> **CC&R's at issue in this case by extending the life of the architectural committee by one year and providing for transfer of the committee's authority to the property owners association for a period of 14 years, rather than leaving to the subdivision's homeowners the decision whether to create a new entity with approval authority**. By the following year, in the CC&R's for tract 26065 (the *Zabrucky* CC&R's), **the life of the architectural committee was extended by more than a dozen years (to Dec. 31, 1980), and the transfer of authority to the association lasted an additional 15 years. Nowhere do these revised CC&R's, with extended periods for approval of plans and specifications for alterations and renovations to existing residences, indicate an intent to prohibit remodeling a residence's first or second story after the applicable sunset period**. **No such reading of the CC&R's before us would be reasonable**. (Citations omitted.)

(Eisen v. Tavangarian (2019) 36 Cal.App.5th 626, 641-42 [bold emphasis and underlining added].)

On the other hand, in *Eisen,* the Second District, Division Seven disapproved of the modification to the CC&Rs which Division Seven earlier had read into ¶ 11 of the same CC&R language in *Zabrucky v. McAdams* (2005) 129 Cal.App.4th 618. *Eisen* disagreed with *Zabrucky* to the extent that ¶ 11 addressed remodeling or altering an existing residence.

> The trial court grounded its interpretation of the CC&R's potentially applicable to the Tavangarians' renovations of the house at 1134 Lachman Lane on this court's divided decision in *Zabrucky, supra*, 129 Cal.App.4th 618, which, as discussed, held **paragraph 11 of the Marquez Knolls CC&R's prohibited any remodeling or alteration of an existing residence that "'may at present or in the future unreasonably obstruct the view from any other lot**.'" (*Id.* at p. 629 [adding, with underlining, the word "unreasonably" to the text of the CC&R's].) **Based on that interpretation of the view protection provided by paragraph 11, the trial court ruled that paragraph 1 afforded even greater protection to improvements that enlarged the existing second story of a residence**.
>
> . . . [*637] . . . [*638] . . .
>
> c. *Paragraph 11 does not restrict renovating or altering existing residences*
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> The foregoing analysis leads directly to the question we previously considered in *Zabrucky, supra*, 129 Cal.App.4th 618**: Does paragraph 11 of the CC&R's,**

which, after limiting the height of fences and hedges between the street and the front setback line, provides, "nor shall any tree, shrub or other landscaping be planted or any structures erected that may at present or in the future obstruct the view from any other lot," apply to alterations or renovations to existing homes? The majority opinion, although conceding the issue presented a "'true conundrum'" and describing its conclusion as only "marginally more logical and supportable" than the opposing view (*id.* at p. 624), reversed the trial court and answered with a modified "yes." Giving the words "any structure[s]" what it termed their ordinary meaning and mindful of the desire of most existing Marquez Knolls homeowners to protect their views and property values (*id.* at p. 628), the majority held paragraph 11's restrictions applied to additions to, or renovations of, an existing residence. (*Ibid.*) The majority added, however, that "it is not reasonable to interpret the CC&R's as prohibiting any obstruction of existing views," even though that is exactly what paragraph 11 states. (*Id.* at p. 629.) **Instead, the majority concluded "it would be in keeping with the intent of the drafters of the CC&R's to read into paragraph 11 a provision that the view may not be unreasonably obstructed** … ." (*Ibid.*)

The *Zabrucky* majority misread paragraph 11. It is certainly true that the common meaning of the word "structure," considered without regard to context, includes a house and that adding rooms to a residence or expanding existing ones could be described as erecting a structure. **But context and usage matter**. (See *White, supra*, 116 Cal.App.3d at p. 898 [cautioning, while interpreting a view protection provision in CC&R's governing a portion of the Trousdale Estates section of Beverly Hills, "[t]he word 'structure' as used in the CC & Rs has various meanings depending upon the context in which it is used"].)

For purposes of properly understanding the scope of the view protections in paragraph 11, paragraph 3, mentioned only in passing in *Zabrucky*, provides a necessary backdrop. That paragraph established a general front setback minimum for any "building" and then separately specified front and side setback limits for the "residence" and for "a detached garage or other outbuilding." That is, paragraph 3 expressly contemplated homeowners in Marquez Knolls might construct not only their residence with a detached garage, as authorized by paragraph 1, but also "outbuildings": "'[a] small building appurtenant to a main building, and generally separated from it; e.g. outhouse; storage shed.'" (*People v. Smith* (1994) 21 Cal.App.4th 942, 951 [26 Cal. Rptr. 2d 580], quoting Black's Law Dict. (5th ed. 1979) p. 993, col. 1.) Paragraph 6

similarly anticipated outbuildings might be erected on lots within the tract and prohibited their use as a residence.

Recognizing that outbuildings, as well as residences, might be built on lots within tract 20305 gives meaning to the word choices reflected in paragraphs 1, 2 and 11 of the CC&R's. **As discussed, when mandating a general one-story height limit, paragraph 1 refers to dwellings that are both "erected" and "altered." Similarly, paragraph 2 in requiring architectural committee approval of building plans expressly applies to "erection of said such building or making of any alterations**." **Yet paragraph 11 restricts only erecting a structure, not making alterations to one**. While that language would unquestionably apply to construction of a greenhouse, storage shed or other form of outbuilding, **omission in this paragraph of the word "alter" indicates that covenant does not apply to renovations or remodeling of the homeowner's residence**.

Indeed, when advocating for their restrictive interpretation of paragraph 1, the Eisens have recognized the significance of Marquez Knolls Inc.'s decision to use only the verb "erect" and not also "alter" when drafting a covenant. The Eisens emphasize that the second portion of paragraph 1, which addresses approval for the construction of a two-story residence, does not use the verb "alter"; that omission, they argue, means no remodeling is permissible: "Under Paragraph 1 of the CC&Rs, Defendants are prohibited from altering the second story of an existing two-story dwelling, as the word 'alter' is specifically omitted from the reference to two-story dwellings to indicate that a two-story dwelling may not be altered. … Pursuant to Paragraph 1 of the CC&Rs, only a one-story home may be altered." By a parity of reasoning, because the word "alter" was "specifically omitted" from the reference to structures in paragraph 11, the restrictions in that covenant do not apply to plans to remodel an existing residence.

This more limited reading of "structures" in paragraph 11 is supported by the rule of construction known by its Latin name *noscitur a sociis*: "Under the rule of *noscitur a sociis*, '"the meaning of a word may be enlarged or restrained by reference to the object of the whole clause in which it is used."'" (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 14 [241 Cal. Rptr. 67, 743 P.2d 1323].) **In accordance with this principle, "a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant, or would otherwise make the item markedly**

dissimilar to the other items in the list." (*Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1012 [9 Cal. Rptr. 2d 358, 831 P.2d 798]; see *In re J.G.* (2019) 6 Cal.5th 867, 880 [243 Cal. Rptr. 3d 827, 434 P.3d 1108]; *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 960 [32 Cal. Rptr. 3d 5, 116 P.3d 479].) **Although in other contexts the word "structure" may include the residence itself, given the apparent object of paragraph 11 and the items listed—restricting the height of fences, hedges, trees, shrubs and other types of landscaping—"structures" in this paragraph is properly limited to outbuildings or similar objects surrounding the dwelling house, rather than improvements to the residence itself**.

Additionally, any interpretation of the scope of paragraph 11's restrictions on "structures" must necessarily be influenced by the paragraph's relationship to the document as a whole. (See *Ezer v. Fuchsloch, supra*, 99 Cal.App.3d at pp. 861–862 [disapproving "disjointed, single-paragraph, strict construction approach to a restrictive-covenant-document interpretation" and holding CC&R's must be construed as a whole to give effect to every paragraph and to the general intent of the covenanting parties].) **Alterations to an existing residence are expressly regulated by paragraph 2. If the architectural committee, empowered by that provision to approve plans for remodeling a residence, were obligated to reject a proposal that obstructed the view from another lot, surely that restriction would also have been included in paragraph 2 or an immediately succeeding provision of the CC&R's**.

A similar question of the relationship of a paragraph in the CC&R's that governed construction, erection or alteration of a "'building, structure or improvement'" (paragraph III), and thus unambiguously applied to the residence, and a separate paragraph that prohibited planting or erecting any "'hedge or hedgerow, or wall or fence or other structure … in such location or in such height as to unreasonably obstruct the view from any other lot'" (paragraph IV) was at issue in *White, supra*, 116 Cal.App.3d at page 895. In holding that a new single-family residence that satisfied the requirements of paragraph III was not a "structure" subject to paragraph IV, the *White* court emphasized that "the interpretation of paragraph IV was made with reference to the CC & Rs as a whole, and specifically in conjunction with paragraph III" and explained that paragraph III had detailed provisions applicable to the construction of the residence. (*Id.* at pp. 898–899.) Given that organization of the CC&R's, the court concluded, "**It is not logical to further restrict buildings by the catchall phrase 'other structures' in a**

> **paragraph devoted to hedges, walls and fences."** (*Id.* at p. 898.) **It is equally illogical here to read paragraph 11, which immediately follows a paragraph prohibiting raising [*646] poultry on a Marquez Knolls lot, as containing a significant limitation on a homeowner's ability to remodel and improve his or her home, a topic dealt with extensively in paragraph 2**.
>
> The original 1957 CC&R's for Marquez Knoll tract 20179 and the subsequent amendment to paragraph 12, submitted by the Eisens as interpretative aids, do not suggest a different result. Originally paragraph 12 read, "No fences or hedges exceeding three feet in height shall be erected or permitted to remain between the street and the front set-back line." That paragraph was amended eight weeks later to read, "No fences or hedges exceeding three feet in height shall be erected or permitted to remain between the street and the front set-back line nor shall any tree, shrub, or other landscaping be planted or constructed that may at present or in the future obstruct the view from any other lot in this tract." The Eisens point out that the language "or other landscaping be planted or constructed that may …" in the amended tract 20179 CC&R's was modified by 1962 in paragraph 11 of the tract 20305 CC&R's at issue in this case to read, "or other landscaping be planted or any structures erected that may … ." This evolution of the wording in the paragraph, they assert, makes it clear that the term "structures" in paragraph 11 "is intended to be different from landscaping and plantings" and "stood separately from the references to tree, shrub, or other landscaping." True as that may be, nothing in this language change indicates "structures" as used in paragraph 11 was intended to apply to the homeowner's residence, rather than to include all forms of outbuildings other than a private three-car garage.

(*Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 635-648.)

The *Eisen* decision can be read to leave intact *Zabrucky*'s construction of ¶ 11 of the CC&Rs to permit erecting (as opposed to renovation or remodeling) that does not "unreasonably obstruct" the view from any other lot.

> **However, it is not reasonable to interpret the CC&R's 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&R's 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&R's 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 <u>unreasonably</u> obstruct the view from any other lot**." (Change underscored.) 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.) 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 homes in the tract also partially blocked other owners' views.

(*Zabrucky v. McAdams* (2005) 129 Cal.App.4th 618, 629 [underlining in original, bold emphasis added].)

Plaintiffs allege at ¶ 15:

> 15. The CC&Rs for Tract 27432, executed by the developers on March 31, 1969 and recorded in the Official Records of Los Angeles, may have been amended by an Assignment of Rights and Powers Under Covenants, Conditions and Restrictions ("Assignment"), executed on October 25, 1994 and recorded in the Official Records of Los Angeles County on March 13, 1996 as Instrument No. 96-403012, a true and correct copy of which is attached to this Complaint as Exhibit F and incorporated by this reference.

The Assignment of Rights and Powers Under Covenants, Conditions and Restrictions, attached as Exhibit F to the Complaint, does not support Plaintiffs' position. As Defendant notes in the Reply, the Assignment purports to assign the following:

> Declarants **grant, assign, and transfer**, without warranty of any kind, **<u>to</u> the Marquez Knolls Property Owners Association, Inc**., all judgment and enforcement rights and powers **<u>retained or reserved by the Declarants under the provisions of CC&R</u>** pertaining to the following Tracts of land. . .

(Bold emphasis and underlining added.)

However, as Defendant argues, the Declarants did not retain, reserve or hold any power set forth in ¶ 2 of the CC&Rs to approve or disapprove a design and location which Declarants could assign to the MKPOA because the MKPOA already held that power pursuant to ¶ 2 of the

CC&Rs, and that power ceased and determined on December 31, 1995 per the express terms of ¶ 2.

Moreover, Plaintiffs' allegation at ¶ 32—that the CC&Rs place enforcement of the view preservation language in the hands of the homeowners who must file suit to enjoin the erection or alteration of a building that detracts or obstructs their view—is not supported by the language of the CC&Rs attached to the Complaint as Exhibit E. "[F]acts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence. (Citation omitted.)" (*Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.)

A close reading of ¶ 2 of the CC&Rs reveals that it was incumbent upon the Architectural Committee (and subsequently the MKPOA) to either approve or disapprove a design within 30 days or to file a suit to enjoin the erection of or alterations to such a building. This is because "such approval," i.e., that of the Committee or MKPOA, "will not be required and this covenant shall be deemed to have been fully complied with" if there was no approval or disapproval within 30 days and no filing of a lawsuit to enjoin the construction. Implicit in the language of ¶ 2 is that it was within the Committee or MKPOA's discretion whether to file such a lawsuit. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code § 1641.) "We must give significance to every word of a contract, when possible, and avoid an interpretation that renders a word surplusage." (Citation omitted.) (*Advanced Network, Inc. v. Peerless Ins. Co.* (2010) 190 Cal.App.4th 1054, 1063.)

As noted above, however, under *Zabrucky*, ¶ 11 of the CC&Rs would permit the erecting of a single story dwelling that does not "unreasonably obstruct" the view from any other lot. Whether Defendant's structure "unreasonably obstructs" the view from any other lot is a question of fact outside the scope of this demurrer. As such, the first cause of action pleads facts sufficient to state a cause of action.

The demurrer to the first cause of action in OVERRULED.

2. Second Cause of Action (Private Nuisance).

> "[I]t is well settled in this state that an owner of land may not do even nonnegligent acts on his property with impunity where they create a nuisance as to his neighbor." (Citation omitted].) "To prevail on an action for private nuisance, a plaintiff must first prove an interference with the plaintiff's use and

> enjoyment of his or her property. (Citation omitted .) Second, 'the invasion of the plaintiff's interest in the use and enjoyment of the land [must be] *substantial*, i.e., that it cause[s] the plaintiff to suffer "substantial actual damage."' (*Ibid.*) Third, '"[t]he interference with the protected interest must not only be substantial, but it must also be *unreasonable*" [citation], i.e., it must be "of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land."' (Citations omitted.)

(*Lynch v. Peter & Associates* (2024) 104 Cal.App.5th 1181, 1197.)

> However:
>
> " '[A]s a general rule, a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right.' " (Citations omitted.) [and] ". . . the courts have held that a building or structure cannot be complained of as a nuisance *merely* because it obstructs the view from neighboring property" (citation omitted). . . .

(*Oliver v. AT&T Wireless Services* (1999) 76 Cal. App. 4th 521, 535-36.)

> Although, in the light of the foregoing principles, it would appear that an interference with the view from land may amount to a nuisance, the courts have held that a building or structure cannot be complained of as a nuisance *merely* because it obstructs the view from neighboring property. (Citations omitted.)

(*Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 126-127.)

Here, the nuisance cause of action is based upon the alleged obstruction of Plaintiffs' views due to Defendant's structure. (Complaint, ¶¶ 55 – 60.) Without more, this does not constitute a nuisance.

The demurrer to the second cause of action is SUSTAINED with leave to amend.

3. Third Cause of Action (Negligence).

The elements of a cause of action for negligence are (1) a legal duty to use reasonable care, (2) breach of that duty, and (3) proximate [or legal] cause between the breach and (4) the plaintiff's injury. [Citation.]" (Citation omitted.) (*Phillips v. TLC Plumbing, Inc.* (2009) 172

Cal.App.4th 1133, 1139.)

In connection with the negligence cause of action, the Complaint alleges at ¶ 70: "Plaintiffs are damaged by Defendants' construction in that the proposed structure will unreasonably detract from the view of Plaintiffs' lot."

To the extent this is a form of emotional distress, in general, "emotional distress damages are not " 'available in every case in which there is an independent cause of action founded upon negligence.' [Citation.]" (*Erlich v. Menezes*, *supra*, 21 Cal.4th 543, 554.) Such damages have generally been allowed where the defendant's conduct caused physical injury. . . . But in the absence of physical injury, the courts have never allowed recovery of damages for emotional distress arising solely from property damage or economic injury to the plaintiff." (*Butler-Rupp v. Lourdeaux* (2005) 134 Cal.App.4th 1220, 1227-28.) Recovery of emotional distress damages for negligence may be allowed where no physical impact or injury occurred "in certain specialized classes of cases. Where the negligence is of a type which will cause highly unusual as well as predictable emotional distress, recovery has been allowed." (Citations omitted.)" (*Id.* at 1227.)

To the extent Plaintiffs assert economic harm in the form of lowered property value:

> [E]conomic damages, standing alone, can be recovered under some circumstances in an action for negligence. "[A]n injury to the plaintiff's economic interests should not go uncompensated merely because it was unaccompanied by any injury to his person or property." (Citations omitted.) Further, the reasoning of J'Aire is wholly incompatible with a limitation of the cause of action to those instances in which the plaintiff and defendant are not in privity, the secondary basis for the trial court's ruling.
>
> Nevertheless, J'Aire does require that the parties have a "special relationship" for such a cause of action to arise. (J'Aire, supra, 24 Cal. 3d at p. 804.) That special relationship must give rise to a duty on the part of the defendant to use due care to avoid economic injury to the plaintiff. (Id. at p. 803.) In the context of a motion for judgment on the pleadings, this means the complaint must allege facts constituting such special relationship. . . .

(*Ott v. Alfa-Laval Agri, Inc.* (1995) 31 Cal.App.4th 1439, 1448.)

Here, Plaintiffs have not pled or addressed the *J'Aire* factors to support a claim for economic damages resulting from negligence. As such, the demurrer to the third cause of action

is SUSTAINED with leave to amend.

4. Fourth Cause of Action (Declaratory Relief).

A cause of action is stated whether Plaintiff is entitled to declaratory relief in her favor or not. (*Columbia Pictures Corp. v. DeToth* (1945) 26 Cal.2d 753, 760 ["It is not essential, to entitle a plaintiff to seek declaratory relief, that he should establish his right to a favorable declaration."])

In this regard, declaratory relief is proper even if it results in Defendant's favor.

The demurrer to the fourth cause of action is OVERRULED.

Plaintiffs are given 30 days' leave to amend where indicated.

Footnotes:

[1] Merriam-Webster includes one definition of "determine" to mean: *intransitive verb* . . . "to come to an end or become void." (See https://www.merriam-webster.com/dictionary/determine.)

[2] In *Eisen* the power and duties of the Architectural Committee ceased on December 31, 1966, and passed to the MKPOA, whose powers then ceased on December 31, 1980. (*Eisen v. Tavangarian* (2019) 36 Cal.App.5th 626, 630.)

This Order constitutes the entirety of the Court's ruling and no separate order shall be issued.

Clerk is ordered to give notice.

Certificate of Service is attached.