

Attorneys' Fees Also Collected

Couple Ordered to Remove a Non-Conforming Deck Railing

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In a Michigan case, *Village of Hickory Pointe Homeowners Association v. Smyk* (2004) 262 Mich. App. 512; 686 N.W.2d 506, the appellate court sided with the plaintiff association when the defendant homeowners installed a backyard deck that did not conform to the Association's CC&Rs, despite the homeowners' claim that the violation was so minor as to be disregarded as enforceable by the court. This case is significant because the legal underpinnings of the decision are very similar to the legal standards applicable under California law.

Deck Plans Submitted

The Smyks submitted plans for a backyard deck for approval by the Village of Hickory Pointe Homeowners Association, but the plans were not approved because the plans did not conform to the Association's CC&Rs. The proposed design called for a deck railing connected to the deck floor without the required clearance between the floor and the bottom of the railing. The Association alleged that its required design provided a greater utility for maintenance and

upkeep, and was more aesthetically consistent with the Association's image goals.

Smyks Construct Deck Before Railing Design Approved

After submitting the plans, but without first receiving approval, the Smyks constructed the deck with the disapproved railing design. The Association sued, seeking equitable relief to enforce the Association's CC&Rs and require the Smyks to install the proper railing.

Trial Court Ruling Reversed by Appellate Court

The trial court found that the Smyks breached the CC&Rs, but the breach constituted a "technical violation" that imposed no substantial injury upon the Association. The Michigan appellate court reversed the trial court, explaining that

It is a "well-understood proposition that a breach of a covenant, no matter how *de minimis* the damages, can be the subject of enforcement ... If the

construction of the instrument [is] clear and the breach clear, then it is not a question of damage, *but the mere circumstance of the breach of the covenant affords sufficient ground for the Court to interfere by injunction.*" [Citations omitted; emphasis added.] 262 Mich. App. 512, 516; 686 N.W.2d 506, 510.

The appellate court determined that CC&Rs is a contract created by the parties and designed to enhance property values. The Village of Hickory Pointe CC&Rs clearly stated that architectural approval was required prior to construction of any structure. The appellate court also noted that all breaches, however seemingly "technical" are otherwise significant breaches that may be enforced by an Association specifically designated to do so. Finally, the Michigan appellate court also awarded attorney's fees to the Association to be paid by the Smyks because the CC&Rs provided for an award of reasonable fees and costs incurred in the enforcement of the covenants. ■