

Carport Modification Backfires

What Are Those Judges Thinking?

BY LAURIE CROCE STREETER, ESQ.



Knowing when to seek enforcement of CC&Rs in a court of law can be perplexing. Primarily you

must weigh the cost of pursuing litigation against the risk of losing the case. This analysis leads to some basic questions. Does it matter how the judge (or the arbitrator) *feels* about the dispute? If it does, which side will appear more sympathetic? Can the “big, bad” association ever really “win” when challenged by the “little, forlorn” homeowner, especially one who has already spent thousands of dollars and is willing to spend thousands more, to force a change in policy and procedures he simply didn’t like? Does it all come down to dollars and cents (and therefore, sheer nonsense)?

A recent case decided in the Orange County Superior Court, and affirmed by the Fourth District Court of Appeal sitting in Orange County, reveals that an association which attempts in good faith to “do the right thing” can, indeed, prevail against an unsympathetic homeowner, be adjudged the prevailing party, and recover its attorneys’ fees. The case *Lake*

Forest Community Association v. Kuntz, decided on March 28, 2003, may not be cited as legal precedent by order of the California Supreme Court. However, the written opinion of the appellate court, which quotes key elements of the trial court’s Judgment, offers valuable insight into how courts sometimes evaluate an association-

ing, in accordance with a provision in the CC&Rs which prohibited homeowners from keeping mobile homes, campers and the like on the street “in such a manner as will be visible from neighboring property.” Mrs. Kuntz finally moved the motor home to a remote location. She then applied to the association’s Architectural

Control Committee for

the existing structure and install a stucco edifice. It would conform to the city’s building codes but conflict egregiously with the work that the ACC had approved. During construction, the association issued two stop orders, but Mrs. Kuntz ignored them and allowed the structure to be built to completion. The Association took Mrs. Kuntz to court, even though her son-in-law had previously bragged that the Association couldn’t stop Mrs. Kuntz and would never win in court.

Judgment Issued

How wrong that prediction turned out to be. The trial court judge issued a Judgment which required

Mrs. Kuntz to tear down the new structure, despite her protestations that such an order would create a (financial) hardship for her. On appeal, with respect to the issue of the non-conforming carport/storage area, Mrs. Kuntz argued that the Association’s procedures and enforcement actions were unreasonable and unfair. The court of appeal rejected Mrs. Kuntz’s claims, assessed *her* behavior to have been unreasonable and unfair, and affirmed the trial court Judgment, including a deci-

CONTINUED ►



versus-homeowner dispute, and make the hard choices necessary to ensure the ends of justice.

The Facts

The facts of the *Lake Forest* case are simple. Mrs. Kuntz owned a home in the Lake Forest community with an attached carport/recreational vehicle storage area. She bought a motor home that was too large for the space. She tried parking the motor home on the street (owned by the association) but was ticketed and threatened with tow-

approval of construction to modify the carport, describing the work as “repair of the existing r.v. storage structure with like style and materials.” This portrayal was a flagrant misrepresentation of what she really intended to do — build a new enclosed facility for her oversized motor home.

The association approved the repair job subject to Mrs. Kuntz obtaining a building permit from the City of Lake Forest. The city required Mrs. Kuntz to install a firewall, which she interpreted to mean approval to demolish

▶CONTINUED

sion that the Association was the prevailing party for purposes of imposing attorneys' fees on the other party (i.e., Mrs. Kuntz).

Reaction of Decision-Makers

Aside from the outcome, the importance of this case resides in the trial and appellate courts' telling statements which reveal not just the legal thinking but also the emotional reactions of the decision-makers.

From their own words, clearly the trial court judge and appellate court justices based their decisions as much on their feelings about Mrs. Kuntz as on the legal analysis they applied to the circumstances. Here is an excerpt from the appellate court's decision, quoting the trial court:

...[D]efendant ignored the committee's disapproval of the stucco wall and continued work on the project "to her peril." ... [Mrs. Kuntz] "continued to build rather than work out a solution to the problem when so invited and added other changes to the project for which she submitted no form requests, descriptions, or

anything for architectural approval as request by the association." The [trial] court found it "clear from the evidence that once the request for a stucco firewall had been disapproved, [Mrs. Kuntz] had no intention of complying with the CC&Rs re architectural approval for anything. She did what she wanted and ignored the homeowners association."

Another example of the trial court's thinking, which was expressly adopted by the appellate court, is the following:

Ordering [Mrs. Kuntz] to demolish the new structure and comply with all CC&Rs in the future, the [trial] court expressly considered the equities and balanced hardships. It found "nothing short of destruction can remedy the problem." It concluded that allowing the structure to remain would "negatively impact [the neighbor's] property and erode any authority of the [Association's] architectural committee to preclude such modifications and defiance in the future." The new structure represented "a series of repeated violations

of the CC&Rs" and demonstrated "clear defiance of [plaintiff's] authority and the very CC&Rs that bind [defendant] and all property owners in the association."

The Court of Appeal politely scoffed at Mrs. Kuntz's suggestion that it adopt a rule which would require the association "to sit idly by until the construction has been completed and then ... hold hearings to see whether the structure might, on second thought, pass muster." Hence, the Court of Appeal used the trial court's own words characterizing Mrs. Kuntz as unreasonably defiant to decide that "to prevent erosion of plaintiff's authority in the future, [Mrs. Kuntz] would have to demolish the structure and submit plans for approval of any replacement."

The Lake Forest case demonstrates that it *does* matter how the decision-maker feels about the dispute. Judges are human, after all – and the human aspect of an association-versus-homeowner dispute can play a decisive role in the outcome. ■