

California Supreme Court Remains Consistent with Trial & Appellate Court

## 1999 No-Pet Rule Enforced

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In *Villa de las Palmas Homeowners Association v. Terifaj* (June 14, 2004) 33 Cal.4th 73, the California Supreme Court addressed several procedural and substantive issues pertaining to the enforceability of CC&Rs in general, and pet restrictions in particular. The questions addressed were (a) whether use restrictions added to the CC&Rs through an amendment and recorded after a homeowner had purchased an individual unit were binding on such an owner, and (b) whether the California Supreme Court's rule set forth in *Nahrstedt v. Lakeside Village Condominium Association* (1994) 8 Cal.4th 361 ("*Nahrstedt*") – that restrictions in a common interest development's declaration are presumed to be reasonable and enforceable – applied with equal force to CC&R amendments. The answer to both questions was a resounding "yes."

### Veterinarian moves pet in – breaks rule

Villa de las Palmas is a small condominium development consisting of 24 mostly vacation-home units located in Palm Springs. Pursuant to the authority granted in the Villa de las Palmas CC&Rs – but not a specific provision in the CC&Rs banning pets – the Association adopted a no-pet rule. Paula Terifaj, a veterinarian who purchased her vacation home unit in 1995, did not receive a written copy of the no-pet rule, but was admittedly aware of it at point of purchase. Yet, she nevertheless brought her boxer dogs to the complex in violation of the rule. Terifaj attempted to have the Association amend the no-pet rule at the Association's 1996 and 2000 general meetings, but was unsuccessful.

### Warned, Sued, and Enforced

The Association repeatedly warned Terifaj that she was violating the community's no-pet rule and was eventually compelled to bring suit against Terifaj in August 1999.

During the pendency of the lawsuit to enforce the rule, the members of the

Association voted to amend their CC&Rs to add a specific no-pet use restriction. The Association thereafter filed an amended complaint alleging the same causes of action and seeking the same relief as the original complaint, this time based upon the CC&Rs rather than the Rules & Regulations for the community. The judge in a bench trial (i.e., a trial without a jury) ruled in favor of the Association, finding that the covenants and restrictions in the Amended CC&Rs were enforceable equitable servitudes, and granted a Judgment against Terifaj permanently enjoining any further violation of the no-pet restriction.

### Supreme Court rejects arguments

Terifaj made several arguments to the California Supreme Court in seeking to overturn the Judgment. First she argued that the restriction in the CC&Rs banning pets was added after she had purchased her Villa de las Palmas unit, and therefore did not apply to her. The California Supreme Court rejected this argument, holding that use restrictions added to CC&Rs by amendment bind not only subsequent purchasers, but current homeowners as well. The California Supreme Court noted that Terifaj's argument ran counter to a clear reading of the applicable statutes contained in the Davis-Stirling Common Interest Development Act. The Court also reasoned that her argument was untenable, stating that "to allow a declaration to be amended but limit its applicability to subsequent purchasers would make little sense," since Terifaj's scheme would result in use restrictions applying to some but not all owners in the community at any given time – leading to instability in the community, precisely what the CC&Rs are meant to avoid.

Second, Terifaj argued that the no-pet provision added to the CC&Rs was procedurally unreasonable because the provision was not contained in a document recorded prior to her purchase of a unit in the development. In other words, Terifaj argued she did not have notice of

the restriction when she purchased the property and, therefore, it could not be enforced against her. Again, the California Supreme Court rejected these arguments based on the Davis-Stirling Act.

Terifaj proffered a third argument by which she averred, in effect, that amended CC&Rs are not enforceable as equitable servitudes like original CC&Rs are. The California Supreme Court rejected this argument for being as destabilizing as the first argument.

Fourth and finally, Terifaj argued that the no-pet restriction in the CC&Rs did not meet the Court's own *Nahrstedt* standards, in that it was substantively arbitrary and imposed a burden on Terifaj that far outweighed any benefit to the community from the rule. Here, the California Supreme Court first explained that the *Nahrstedt* rule applies to subsequently adopted and recorded use restrictions incorporated into a development's CC&Rs as it does to original CC&Rs.

(Interestingly, the *Nahrstedt* case also involved a pet restriction.) Then it held that the Villa de las Palmas CC&Rs provision prohibiting pets was not unreasonable as a matter of law. The Supreme Court reiterated its pronouncement in *Nahrstedt* that prohibiting pets is "rationally related to health, sanitation and noise concerns legitimately held by residents" of common interest developments. And importantly, the Court held that the recently enacted Civil Code Section 1360.5 (which requires associations to allow at least one pet in all governing documents created after January 2001) does not contradict the conclusion that a no-pet restriction may be reasonable and enforceable under the circumstances. The Court explained that Section 1360.5 does not mean all no-pet provisions are unreasonable – it merely demonstrates a legislative preference for allowing homeowners in common interest developments to keep at least one pet.

It is worth noting, in conclusion, that Terifaj not only lost her case in the trial court, the appellate court, and the California Supreme Court, but she was also required to pay the Association's attorneys' fees in addition to her own. ■