

1. GETZ v. SERRANO EL DORADO OWNERS' ASS'N, ET AL., PC20170113**(A) Plaintiff's Motion for Summary Adjudication****(B) Serrano El Dorado Owners' Association's Motion for Summary Adjudication****(C) Serrano Associates' Motion for Summary Adjudication**

Plaintiff asserts various causes of action against defendants Serrano El Dorado Owners' Association ("HOA") and Serrano Associates, LLC ("Serrano"), premised upon allegations that the HOA Board overcharged developed property owners and undercharged assessments on undeveloped property in the various HOA Cost Centers. Pending are motions for summary adjudication from all parties as to the First Cause of Action ("1st C/A") for declaratory relief asserted in plaintiffs' Third Amended Complaint ("TAC").

1. STANDARD OF REVIEW

"A party may move for summary adjudication as to one or more causes of action within an action, ... if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, [or] that there is no merit to an affirmative defense as to any cause of action A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c(f)(1).) "A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." (*Id.*, subd. (f)(2).)

The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.)

“The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact.” (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

2. PRINCIPLES OF CONTRACT INTERPRETATION

“The same rules that apply to interpretation of contracts apply to the interpretation of CC & R’s.” (*Chee v. Amanda Goldt Prop. Mgmt.* (2006) 143 Cal.App.4th 1360, 1377.) The fundamental goal of contract interpretation is “to give effect to the mutual intention of the parties as it existed at the time of contracting.” (Civ. Code, § 1636.) “California recognizes the objective theory of contracts [citation], under which ‘[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation’ [citation]. The parties’ undisclosed intent or understanding is irrelevant to contract interpretation. [Citations.]” (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956.)

The “words of a contract are to be understood in their ordinary and popular sense” (*id.*, § 1644), and the parties’ intent is ascertained from those words alone if it is “clear and explicit, and does not involve an absurdity.” (*id.*, § 1638.) Courts routinely consult dictionaries to determine the usual and ordinary meaning of a word. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1499.)

“Although ‘the intention of the parties is to be ascertained from the writing alone, if possible’ (*id.*, § 1639), ‘[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates’ (*id.*, § 1647). ‘However broad may be the terms of a contract, it extends only to those things ... which it appears that the

parties intended to contract.’ (*Id.*, § 1648.)” (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 524.)

A “contract is ambiguous [if its terms are] reasonably susceptible to more than one interpretation.” (*Scheenstra v. Cal. Dairies, Inc.* (2013) 213 Cal.App.4th 370, 389.) Extrinsic evidence “is admissible to interpret a [written agreement] if ‘relevant to prove a meaning to which the language of the instrument is reasonably susceptible.’ ” (*Hervey v. Mercury Cas. Co.* (2010) 185 Cal.App.4th 954, 961.) Although extrinsic evidence “may be admissible to determine whether the terms of a contract are ambiguous [citation], it is not admissible if it contradicts a clear and explicit ... provision [citation].” (*Ibid.*)

3. PARTIES’ REQUESTS FOR JUDICIAL NOTICE (“RJN”)

3.1 RJN Re: Plaintiff’s Motion

HOA’s RJN in Support of Opposition to Plaintiff’s Motion

Granted as to item numbers 1–7. (Evid. Code, § 452(c), (d)(1), (h).)

Serrano’s RJN in Support of Opposition to Plaintiff’s Motion

Granted as to Exhibits 2–5. (Evid. Code, § 452(d)(1).)

3.2 RJN Re: HOA’s Motion

HOA’s RJN in Support of Its Motion

Granted as to Exhibits 1–3. (Evid. Code, § 452(d)(1), (h).)

3.3 RJN re: Serrano’s Motion

Serrano’s RJN in Support of Its Motion

Granted as to Exhibits 1–9 to the Prendergast Declaration. (Evid. Code, § 452(c), (d)(1), (h).)

4. EVIDENTIARY OBJECTIONS

4.1 Objections Re: HOA’s Motion and Plaintiff’s Opposition

Plaintiffs’ Objections to HOA’s Evidence

Objection Nos. 1 and 2 are overruled.

HOA's Objections to Plaintiff's Evidence

Objection Nos. 1 and 2 are sustained on the basis of lack of foundation.

Objection Nos. 3, 9, and 10 are sustained on the grounds of relevance, lack of foundation, and the documents are inadmissible as a communication regarding an offer to compromise.

Objection Nos. 4, 5, and 11 are sustained on the grounds of relevance and lack of foundation.

Objection Nos. 6 and 7 are sustained on the basis of relevance.

Objection No. 8 is sustained on the grounds of lack of foundation and the document speaks for itself.

4.2 Objections Re: Serrano's Motion and Plaintiff's OppositionSerrano's Evidentiary Objections to Declaration of Dean Getz Dated 4/27/22

Objection No. 1 is sustained on the basis of lack of foundation.

Serrano's Evidentiary Objections to Declaration of Dean Getz Dated 12/27/21

Objection No. 1 is sustained on the basis of lack of foundation.

Objection No. 2 is sustained on the grounds of lack of foundation and assumes facts not in evidence.

5. PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

Plaintiff moves for summary adjudication against the HOA only. In plaintiff's motion, the sole issue he argues concerns the limit on the HOA's authority to increase annual assessments on owners of developed property. Specifically, plaintiff argues that the court "should determine that the HOA was and is bound by the [Consumer Price Index ("CPI")] cap when fixing Common Assessments against Owners of developed Property so long as Undeveloped Property exists within the HOA." (Pl. Mot., Mem. of P&As, 2:1-3.)

As a preliminary matter, the HOA and Serrano raise several procedural arguments in support of their opposition against plaintiff's motion.

Relief Requested in Plaintiff's Motion Versus the TAC

The HOA and Serrano assert that plaintiff's motion fails because he requests relief in his motion that is different from the relief requested in the TAC.

"[T]he pleadings set the boundaries of the issues to be resolved at summary [adjudication]." (*Oakland Raiders v. Nat'l Football League* (2005) 131 Cal.App.4th 621, 648.) In this regard, the TAC's 1st C/A for declaratory relief requests:

A declaration regarding Plaintiffs' and Defendant owners of undeveloped property's respective assessment obligations pursuant to the CC&Rs, as well as the Defendant Association's duties to enforce those obligations is necessary to prevent Defendants from preventing Plaintiffs, and other members of Serrano, from paying the proper assessments and causing Defendants to pay their fair share of assessment pursuant to the governing documents.

Plaintiffs, and each of them, request a declaration from this Court that the Association must enforce the CC&R assessment obligations of the respective parties and seek to remedy past failures to enforce the CC&R assessment obligations of the respective parties.

(TAC, ¶¶ 42, 43.) Further, in the TAC's "Prayer for Relief," plaintiff requests "[d]eclarations as to the rights and the responsibilities of the Defendants to comply with the CC&Rs as it relates to assessments, enforcing collection policies and voting rights" (TAC, 15:9–11.)

The declaration plaintiff requests in the TAC is problematic. Declaratory relief requires a court to have "narrow, precise questions to guide its examination, without which it is unable to 'decree, and not suggest, what the parties may or may not do.' [Citation.]" (*Zetterberg v. State Dep't of Pub. Health* (1974) 43 Cal.App.3d 657, 664.) Plaintiff's request is not narrow and precise. The requested declaration in the TAC is so broad that it could encompass any conceivable issue concerning "assessment obligations" of the CC&R's and the HOA's duty to enforce those obligations. The issue is further complicated due to plaintiff's request in the TAC's "Prayer for Relief" for a declaration as to the rights

and responsibilities of defendants to comply with the CC&R's as it relates to collection policies and voting rights, which issues are not even mentioned in the 1st C/A.

To add another wrinkle, in the "Conclusion" section of his memorandum in support of the instant motion, plaintiff requests an entirely different declaration, albeit a more precise one, than what is requested in the TAC:

The language of the CC&Rs relating to the calculation of the General Assessment Component of Common Assessments and Common Assessments for Cost Center Components is clear and unambiguous. Defendant Serrano El Dorado Owners' Association may not charge its members more than the amount calculated pursuant to the formula set forth in Paragraph 4 of Exhibit D to the Serrano El Dorado Owners' Association Covenants, Conditions and Restrictions so long as Undeveloped Property exists, and any assessment charged in excess of that amount in the past, if any, constitutes a violation of the Serrano El Dorado Owners' Association Covenants, Conditions and Restrictions.

(Pl. Mot., Mem. of P&As, p. 9.)

Given that the sole issue raised in plaintiff's motion that is supported with cognizable arguments and citation to legal authority concerns the CPI cap, and that the declaration of rights that he now seeks concerns the CPI cap, the court deems as abandoned plaintiff's claims concerning collection policies and voting rights. That said, the TAC does contain allegations about the CPI cap issue. (See TAC, ¶¶ 17, 19, 20, 23, 27.) As such, the court finds that the relief requested in the TAC is worded broadly enough to encompass plaintiff's contentions regarding the CPI cap.

Failure to Move for Summary Adjudication Against Defendant Serrano

Serrano asserts that plaintiff's motion fails because it impermissibly circumvents Serrano, an indispensable party, and therefore does not completely resolve the declaratory relief cause of action.

Serrano's argument is well taken. "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action" (Code Civ. Proc., § 437c(f)(1).) The 1st C/A is asserted "Against All Defendants." (TAC, p. 12.) The 1st C/A alleges there "is an actual and present controversy between Plaintiffs and *Defendants, and each of them*, regarding Plaintiffs' and *Defendant owners*" of undeveloped property. (TAC, ¶ 41 [emphasis added].) Further, the 1st C/A seeks a declaration regarding, inter alia, "*Defendant owners* of undeveloped property's respective assessment obligations" (TAC, ¶ 42 [emphasis added].)

Serrano is a named defendant and owner of undeveloped property, and plaintiff admits in his TAC that there is a present and actual controversy which involves Serrano. Serrano is therefore a necessary party given that the 1st C/A seeks to adjudicate Serrano's assessment obligations. Because plaintiff moves for summary adjudication only as to the HOA, plaintiff's motion is defective as it would not completely dispose of the 1st C/A for declaratory relief.

Additionally, this defect cannot be cured. Serrano is entitled to 75 days' notice if plaintiff were to move for summary adjudication against defendant. Trial is set for August 15, 2022, which is less than 75 days from now. As such, plaintiff does not have sufficient time to file a motion against Serrano.

Accordingly, plaintiff's motion is denied on the basis that it fails to comply with Code of Civil Procedure § 437c(f)(1). Given this procedural defect, it is not necessary for the court to reach the merits of plaintiff's motion. Additionally, and in the alternative, even if the court were to consider the merits of plaintiff's claims, the court would conclude his claims lack merit, as discussed below.

In summary, plaintiff's motion for summary adjudication against the HOA is denied.

6. The HOA's and Serrano's Motions for Summary Adjudication

The court will address both motions in a combined discussion.

The HOA and Serrano contend that the CC&R's are unambiguous and provide that Common Assessments against owners of undeveloped property were extinguished once Common Assessments against owners of developed property at the initial, CPI-capped level were sufficient to meet the relevant budgetary needs of the HOA. In the alternative, if the court finds that the CC&R's are ambiguous, summary adjudication in favor of defendants is still appropriate because extrinsic evidence makes clear the parties intended that Common Assessments against undeveloped property would be extinguished once Common Assessments against owners of developed property at the initial, CPI-capped level were sufficient to meet the relevant budgetary needs of the HOA.

6.1 Creation of the Development, HOA, Village Associations

The CC&R's were recorded in 1995, thus creating the "Master Association" (i.e., the HOA). (HOA Mot., Master List of Exhibits, Ex. 2, §§ 1.06, 2.04.) The CC&R's vest the HOA with authority to, inter alia, set budgets and fix and collect assessments to pay the expenses of the HOA. (*Id.*, Ex., § 1.06.) Owners of property within the development are entitled to membership in the HOA. (*Id.*, Ex. 2, § 2.40 & Art. 4.)

The CC&R's also sanction the creation of Village Associations: "Nothing in this Master Declaration shall prevent the creation of Village Associations to assess, regulate, maintain or manage the portions of the Property, or to own or control portions thereof for the common use or benefit of the Owners of Lots or Parcels in those portions of the Property subject to Supplemental Declarations or Declarations of Annexation pursuant to which such Village Associations are created." (*Id.*, Ex. 2, § 1.06.) "The word 'Village' refers to portions of the Property which are separated from the remainder of the Property, such as separate gated neighborhoods, separate Cost Centers, or areas with respect to which membership in a Village Association is appurtenant." (*Id.*, Ex. 2, § 2.64.) A "Cost Center" means "one or more Improvements or maintenance areas, the maintenance or use of

which Improvements or maintenance areas is fully or partially restricted to Owners of certain Lots or Parcels as specified in one or more Supplemental Declarations or Declarations of Annexation, and where the expenses of operating, maintaining and replacing such Improvements or areas are borne solely or disproportionately by such specified Owners....” (*Id.*, Ex. 2, § 2.20.)

6.2 Provisions Generally Addressing Assessments

An “Assessment” is “a collective term which refers to Capital Improvement Assessments, Common Assessments, Reconstruction Assessments and Reimbursement Assessments made or assessed by the Master Association against an Owner and his or her Lot or Parcel in accordance with the provisions of Article 6 of this Master Declaration.” (*Id.*, Ex. 2, § 2.03.) A “Common Assessment” is defined as “the annual (or supplemental as provided in Section 6.07C) charge against each Owner and his Lot or Parcel, representing a portion of the Common Expenses as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys’ fees or other costs incurred by the Master Association in its efforts to collect all assessments (other than Reimbursement Assessments) authorized pursuant to this Master Declaration.” (*Id.*, Ex. 2, § 2.16.)

Section 6.01 of the CC&R’s sets forth the obligation of owners to pay assessments: Declarant¹ and any Merchant Builder, for each Lot or Parcel owned by Declarant or such Merchant Builder which is subject to assessment, hereby covenants and agrees, and every other Owner of any Lot or Parcel, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Master Association (i) annual Common Assessments for Common Expenses, (ii) Capital Improvement Assessments,

¹ Declarant was the El Dorado Hills Development Company, the predecessor to defendant Serrano. (HOA Mot., Undisputed Material Facts, ¶ 8.)

(iii) Reimbursement Assessments, and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All assessments other than Reimbursement Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Parcel against which such assessment is made. The personal obligation of assessments shall not pass to the successors in title to any Owner, unless expressly assumed by them.

(*Id.*, Ex. 2, § 6.01.)

6.3 Provisions Specifically Addressing Common Assessments Levied Upon Developed and Undeveloped Property

Section 6.05 addresses Common Assessments and how developed and undeveloped property would be assessed:

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the General Operating and Reserve Funds, the Cost Center Operating and Reserve Funds, and any other Maintenance Fund established by the Master Association Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners of Lots or Parcels. The Common Expenses of the Master Association shall be allocated among the Owners and their respective Lots or Parcels for which Common Assessments have commenced based upon the number of Assessment Units chargeable to each such Lot or Parcel as follows:

- A. Assessment Units for Developed Property. Except as provided in Section 6.05D, Assessment Units for developed Property shall be allocated as follows: (i) one Assessment Unit for

each single-family Lot; (ii) three-quarters of one Assessment Unit for each Residential Unit in a halfplex or duplex; (iii) one-half of one Assessment Unit for each Residential Unit in any residential building containing three or more Residential Units and for each residential dwelling unit which is not a Residential Unit, e.g., an apartment dwelling unit which is neither a condominium nor divided into one Lot for each apartment dwelling unit; (iv) one for each 2,000 square feet of gross building area of buildings on any developed commercial or office Parcel, with any fraction being rounded up to the next half Assessment Unit; (v) one for each church Parcel; and (vi) if and when a racquet and/or swimming club is developed, it will be allocated three and one-half Assessment Units per acre. The racquet and swim club referenced in the preceding sentence shall not be Common Area and membership in the Master Association shall not confer any right upon any person to use such facilities. That portion of the Property initially to be assessed pursuant to this Section 6.05A shall be the 160 Lots in the following three maps: Village H El Dorado Hills, Unit 1, Village H El Dorado Hills, Unit 2, and Village I & L El Dorado Hills, Unit 1.

B. Assessment of Undeveloped Property. Undeveloped Property shall be assessed as provided in **Exhibit D** attached hereto and incorporated herein by this reference. As all or any portion of a Parcel which is included within the Property is subdivided into a Residential Subdivision, such Parcel, or subdivided portion thereof, will cease to be assessed as undeveloped and commence to be assessed pursuant to subdivision (i) or (ii) above, on the first day of the first month

following the month in which the first Close of Escrow occurs for the sale of a Lot or Residential Unit in such Residential Subdivision. In the case of the subdivision of only a portion of a Parcel into a Residential Subdivision, the portion not so subdivided shall continue[] to be assessed as undeveloped as provided in **Exhibit D**. As a Parcel which is included within the Property is improved with one or more buildings, such Parcel will cease to be assessed as undeveloped and commence to be assessed pursuant to Section 6.05A above, on the first day of the first month following the month in which the first such building is completed. For purposes of determining Class A and Class B voting rights for undeveloped Property, the undeveloped Property shall be deemed to have the number of Assessment Units the undeveloped Property would have pursuant to Section 6.05A if developed to maximum density under the zoning laws in effect as of the date this Declaration is recorded.

... [¶] ...

E. Amount. Common Assessments shall be levied initially against the Owners of Lots and Parcels in the Property in the amounts as set forth in the Master Association budget on file with the DRE, except as provided in Section 6.07A. Thereafter, the Common Assessments shall be adjusted, subject to the provisions of Exhibit D and Section 6.07 below, in accordance with the combined Budget of the Master Association approved by the Board from time to time, always taking into account the amount of contributions to be made pursuant to any Use/Maintenance Agreement or Subsidy Agreement. If the provisions of Exhibit D

conflict with any provision of this Master Declaration, the provisions of Exhibit D shall control.

(*Id.*, Ex. 2, § 6.05(A), (B), (E) [bolding in original].)

6.4 Exhibit D: Common Assessments Levied on Undeveloped Property

Exhibit D is entitled “Common Assessments So Long As Some Property Is Subject To Assessment As Undeveloped Property (Section 6.05)”:

1. Background. Common Assessments to be levied against the Phase 1 Property are comprised of three components referred to in DRE budget worksheets as: (i) Master/Basic costs, (ii) Cost Center 1 - Certain Road costs, and (iii) Cost Center 2 - Certain Security/Parks/costs.

A. The component referred to in subdivision (i), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the “General Assessment Component.” All of the Property shall pay assessments to satisfy the General Assessment Component.

B. The component referred to in subdivision (ii), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the “Cost Center 1 Component.” The component referred to in subdivision (iii), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the “Cost Center 2 Component.” As undeveloped portions of the Property are developed, it is anticipated that there will be additional Cost Center Components.

Only portions of the Property lying within a particular Cost Center shall pay assessments to satisfy that Cost Center Component.

2. Fixed Assessment Levels – Real Purchasing Power. The purpose and intent of the assessments provided for in this Exhibit are to allocate to undeveloped portions of the Property sufficient portions of the various Components, so that so long as portions of the Property are assessed as undeveloped Lots or Parcels, Common Assessments for developed Lots and Parcels shall remain constant in real purchasing power. To accomplish that objective, the Declarant is willing to accept levels of Common Assessments on undeveloped portions of the Property which, at least during the early phases of development of the Property, may be disproportionately high, taking into account the fact that undeveloped portions of the Property derive little benefit from most of the costs to be defrayed by Common Assessments.

A. The initial level of the General Assessment Component of Common Assessments for Phase 1 shall be \$40 per month per Assessment Unit. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Common Assessments may increase pursuant to paragraph 4, below.

B. As additional Property becomes subject to assessment as developed, the initial level of the General Assessment Component of Common Assessments shall be the level of such General Assessment Component of Common Assessments then applicable to Phase 1. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Common Assessments may increase as provided in paragraph 2A.

C. Subject to credit as provided in paragraph 8, below, the level of the General Assessment Component of Common Assessments for undeveloped Property for any fiscal year shall be an amount sufficient to keep the General Assessment Component of Common Assessments for developed Property from exceeding the levels permitted by paragraphs 2A and 2B for that fiscal year.

D. The initial level of the Cost Center 1 Component of Common Assessments for Phase 1 shall be \$24 per month per Assessment Unit, and the initial level of the Cost Center 2 Component of Common Assessments for Phase 1 shall also be \$24 per month per Assessment Unit. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of each such Component may increase pursuant to paragraph 4, below.

E. As additional Property becomes subject to assessment as developed within Cost Center 1 and Cost Center 2, the initial level of those Cost Center Components of Common Assessments shall be the level of such Components then applicable to Phase 1. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Components may increase as provided in paragraph 2D.

F. Subject to credit as provided in paragraph 8, below, the level of the Cost Center 1 and Cost Center 2 Components of Common Assessments for undeveloped Property within such Cost Centers for any fiscal year shall be an amount sufficient to keep each such Cost Center Component for developed Property from

exceeding the levels permitted by paragraphs 2D and 2E for that fiscal year.

G. The initial level of Cost Center Components of Common Assessments for additional Cost Centers shall be established pursuant to Section 6.05E of the Master Declaration. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Components may increase pursuant to paragraph 4, below.

H. As additional Property becomes subject to assessment as developed within each additional Cost Center, the initial level of the Cost Center Component of Common Assessments for each additional Cost Center shall be the level of such Component then applicable to developed Property within such Cost Center. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Component may increase as provided in paragraph 2G.

I. Subject to credit as provided in paragraph 8, below, the level of the Component for a particular additional Cost Center for undeveloped Property within such Cost Center for any fiscal year shall be an amount sufficient to keep the Component for such Cost Center for developed Property from exceeding the levels permitted by paragraphs 2G and 2H for that fiscal year.

3. Adjustment if Actual Assessments Lower than Permissible Levels.

If Common Assessments levied against any particular developed Property for a particular Component would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Common Assessments shall

nevertheless be levied at the maximum permitted rate as provided in this paragraph 3.

A. If the General Assessment Component of Common Assessments levied against any particular developed Property would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Component shall nevertheless be levied at the maximum permitted rate if, at that time, Cost Center Components of Common Assessments applicable to such developed Property are also being assessed against undeveloped Property within the particular Cost Center(s). The Common Assessments paid pursuant to this paragraph 3A shall be applied to reduce the Common Assessments levied against such undeveloped Property.

B. If the Cost Center Component of Common Assessments levied against any particular developed Property would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Component shall nevertheless be levied at the maximum permitted rate if, at that time, the General Assessment Component of Common Assessments are being assessed against undeveloped Property or if any other Cost Center Component of Common Assessments applicable to such developed Property are also being assessed against undeveloped Property within the particular Cost Center(s). The Common Assessments paid pursuant to this paragraph 3B shall be applied to reduce the Common Assessments levied against such undeveloped Property.

4. Real Purchasing Power. To determine real purchasing power, the Master Association, when preparing its Budget for the ensuing fiscal year, shall

determine purchasing power with reference to the Consumer Price Index for All Urban Consumers, All Items (San Francisco-Oakland-San Jose Metropolitan Area, base years 1982–1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics (the “Index”), by comparing the Comparison Index (defined below) with the Base Index. The Base Index for General Assessment Components and Cost Center 1 and Cost Center 2 Components shall be the latest Index published at least four months prior to the month in which Common Assessments commence under the CC&Rs. The Base Index for the Component for each new Cost Center shall be the latest Index published at least four months prior to the month in which Common Assessments commence which include such Cost Center Component. The Comparison Index shall be the latest Index published at least four months prior to the beginning of the particular fiscal year. If the Comparison Index is different from the Base Index, then the assessment level for the ensuing fiscal year for a developed portion of the Property shall be the initial level for each such portion multiplied by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Base Month Index. In no event shall the General Assessment Component or any Cost Center Component be decreased so long as any undeveloped Property is being assessed with respect thereto.

... [¶] ...

8. Surplus Funds Credit. It is not intended that Common Assessments levied against undeveloped Property result in surplus funds being paid to or accumulated by the Master Association. Accordingly, Common Assessments levied against undeveloped Property for any particular Component shall be reduced each month (except as provided in this paragraph 8) when applicable by the amount, if any, by which Common Assessments for the particular

Component, contributions, subsidies, rent and any other sums collected by the Master Association which are properly applied against the particular Component, exceed the sum necessary to fund (i) the obligations of the Master Association to pay Common Assessment costs for the particular Component identified in the Master Association's then current Budget, regardless of whether the Master Association's Budget anticipated higher costs, plus (ii) the reserves forth in the Master Association's then current Budget.

A portion of the Common Assessments for any particular Component may be used to pay fixed costs identified in line items in the Budget under 100 - Fixed Costs (the "Fixed line Items") and costs identified in line items in the Budget under 400 - Administration (the "Administration Line Items"). Because the Master Association may incur fixed costs identified in the Fixed Line Items on a periodic basis in excess of one month and may incur costs identified in the Administration Line Items in irregular amounts from month to month, any reduction associated with the Fixed Line Items and the Administration Line Items shall be on an other than monthly basis as follows:

A. With respect to the Fixed Line Items for a particular Component, the Common Assessments levied against undeveloped Property for such Component shall be reduced by the amount, if any, by which sums collected by the Master Association and allocated to each such Fixed Line Item exceed the actual costs associated with each such line item only when such costs are actually incurred.

B. With respect to the Administration Line Items for a particular Component, the Common Assessments levied against undeveloped Property for such Component shall be reduced at the end of each of the Master Association's fiscal years by the amount,

if any, by which sums collected by the Master Association and allocated to each such Administration Line Item during the fiscal year exceed the actual costs associated with each such line item during the fiscal year.

If at the end of a Master Association fiscal year, an Owner of undeveloped Property is entitled to a reduction pursuant to paragraphs 8A and/or 8B, above, in an amount greater than the sum such Owner then owes with respect to the applicable Component, such Owner shall be entitled to a refund at the end of the Master Association's then fiscal year in the amount that such Owner's Common Assessments would have been reduced pursuant to this paragraph 8 on account of Common Assessments paid by the Owner during such fiscal year.

(*Id.*, Ex. 2, § 6.05, Ex. D.)

6.5 The CC&R's Are Not Reasonably Susceptible to More Than One Interpretation

The first issue is whether, viewing the relevant portions of the CC&R's as a whole, the intention of the parties can be ascertained from the CC&R's alone (i.e., the language is clear and explicit), or are the CC&R's reasonably susceptible to more than one interpretation. (Civ. Code, §§ 1638, 1641; *Scheenstra*, *supra*, 213 Cal.App.4th at p. 389.)

To be sure, the language of the CC&R's is dense and mind-numbing. But, when the language is taken as a whole, it is clear in the application of the provisions concerning Common Assessments that the intent of the Declarant was to phase out assessments levied on undeveloped property once the assessments levied on developed property were sufficient to meet the relevant budgetary needs of the HOA, or there no longer existed undeveloped property in any given Cost Center.

“ [I]ndeterminacy in the *application* of language signals its vagueness or ambiguity. An ambiguity arises when language is reasonably susceptible of more than one

application to material facts. There cannot be an ambiguity per se, i.e. an ambiguity unrelated to an application.’ [Citation.] [¶] Thus, an ambiguity cannot be created by parsing words outside their context. [Citation.] ‘ “[L]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and *cannot be found to be ambiguous in the abstract.*” ’ [Citation.] ‘Multiple or broad meanings do not necessarily create ambiguity.... [¶] The proper question is whether the word is ambiguous in the ... circumstances of *this* case.’ [Citation.] Nor does the fact that language *could be* clearer make it ambiguous. [Citations.]” (*Alameda County Flood Control & Water Conservation Dist. v. Dep’t of Water Res.* (2013) 213 Cal.App.4th 1163, 1179 [italics in original].)

“To say that language is ambiguous is to say there is more than one semantically permissible candidate for application, though it cannot be determined from the language which is meant. Every substantial claim of ambiguity must tender a candidate reading of the language which is of aid to the claimant. One must ask what meanings are proffered and examine their plausibility in light of the language. A party attacking a meaning succeeds only if the attacker can propose an alternative, plausible, candidate of meaning.” (*Estate of Dye* (2001) 92 Cal.App.4th 966, 976.)

Turning to Exhibit D, its stated purpose was to allocate to undeveloped property sufficient portions of the various Components so that Common Assessments for developed lots remained constant in Real Purchasing Power. (HOA Mot., Master List of Exhibits, Ex. 2, Ex. D, ¶ 2.) To accomplish that objective, the Declarant acknowledged and accepted that assessments on undeveloped property, at least during the early stages of development, would be disproportionately high. (*Ibid.*)

The initial levels set for developed property for the General Assessment Component (“GAC”), Cost Center 1, and Cost Center 2 were \$40, \$24, and \$24 per month, respectively. (*Id.*, Ex. D, ¶ 2(A), (D).) For each fiscal year thereafter, these assessments could be increased pursuant to Paragraph 4 (“Real Purchasing Power”). (*Id.*, Ex. D, ¶ 2(B),

(D.) Paragraph 4 addresses Real Purchasing Power, which is determined by reference to a certain index of the CPI.

As additional property began to be assessed as developed property, such property's initial level of assessment for the various Components would be at the level *then applicable* to Phase 1 (i.e., \$40, \$24, and \$24, as applicable to the property, plus whatever increases had been already levied pursuant to Paragraph 4). For each fiscal year thereafter, these assessments could be increased pursuant to Paragraph 4.

In the meantime, subject to a surplus funds credit (see Paragraph 8), undeveloped property would be assessed for the various Components in "an amount sufficient" to prevent the assessments of developed property from exceeding the levels set for developed property, as described in the previous two paragraphs. (*Id.*, Ex. D, ¶¶ 2(C), (F), (I).)

As lots began to be assessed as developed property, the portion of the GAC and Cost Centers 1 and 2 assessed to undeveloped property would continue to decrease by a certain factor depending upon the parcel. (*Id.*, Ex. D, ¶¶ 5, 6.)

Thus, to summarize in brief, because the CC&R's require the HOA to assess sums sufficient to meet its relevant budgetary needs, at the early stages of development the owners of undeveloped property were required to essentially subsidize the shortfall between the revenue generated from developed property and the HOA's budgetary needs. As that shortfall became smaller, the assessments to undeveloped property would decrease.

It is clear in the application of these provisions that the intent was to eventually phase out Common Assessments levied on undeveloped property.

First, several provisions provide that in no event would Common Assessments be decreased for developed property so long as some property continued to be assessed as undeveloped. For example, Paragraph 4 of Exhibit D explicitly states that the amounts assessed to developed property for the GAC and any given Cost Centers could not be

decreased so long as undeveloped property was being levied upon for those assessments, as well. (*Ibid.*) Even if actual assessments were lower than permissible levels, it was required that the maximum rate permitted be levied against developed property in order to reduce the Common Assessments levied against undeveloped property. (*Id.*, Ex. D, ¶ 3.)

Second, and most importantly, Paragraph 8 of Exhibit D provides that when the Common Assessments levied against undeveloped property resulted in surplus funds being paid to or accumulated by the HOA, the owners of undeveloped property were entitled to a refund, and not also developed property owners. (*Id.*, Ex. D, ¶ 8.) In practice, this means that once the revenue generated from developed property was sufficient to meet the HOA's budgetary needs, the subsidy payments made by owners of undeveloped property were no longer needed because it would have resulted in surplus funds being paid to or accumulated by the HOA, which surplus would have been refunded to the owners of undeveloped property. As such, Exhibit D was no longer needed. Further, because the CPI cap only pertained to the assessment provisions set forth in Exhibit D, the cap, too, was no longer in effect once undeveloped property was no longer subject to assessment pursuant to Exhibit D.

Plaintiff's interpretation of the CC&R's largely consists of parsing sentences outside of their context and imprecisely paraphrasing provisions. Moreover, his interpretation would result in an absurdity since he would require that undeveloped property always be subject to assessment, even if the various Components were financially self-sufficient without funding from undeveloped property, which money then would need to be refunded to the owners of undeveloped property due to there being surplus funds paid to or accumulated by the HOA.

Plaintiff further contends there is no express language in Exhibit D about forever extinguishing assessment obligations against undeveloped property.

The court disagrees. First, the *application* of the language of Exhibit D plainly demonstrates this intent (i.e., the eventual financial self-sufficiency of the various Components due to revenue generated from developed property and surplus funds were refunded to undeveloped property). Second, the phrase “so long as” is conditional language signaling a future end date depending upon a stated condition. In this case, the condition is, “so long as” some property is *subject to assessment* as undeveloped property. The Declarant could have simply written, “so long as” undeveloped property *exists in any given Cost Center*. It did not do so.

As another example—regarding situations where actual assessments are lower than permissible levels—the CC&R’s provide that assessments for GAC and Cost Center Components must still be levied against developed property at the maximum permitted “*if, at that time,*” undeveloped property is *also being assessed*. Again, the Declarant could have simply written, “if, at that time,” undeveloped property *exists within the Property*. It did not do so.

Plaintiff also argues it is unfair not to levy Common Assessments against undeveloped property. This argument is not persuasive. The CC&R’s were recorded in 1995, more than 25 years ago. The CC&R’s “manifest the intent and expectations of the developer and those who take title to property in a common interest development.” (*Pinnacle Museum Tower Ass’n v. Pinnacle Mkt. Dev. (US), LLC* (2012) 55 Cal.4th 223, 250.) By purchasing property within the HOA, each homeowner manifested their consent to the provisions of the CC&R’s. Further, the Davis-Stirling Common Interest Development Act, Civ. Code, § 1350, et seq., acknowledges that developers have “latitude to place in declarations any term they deem appropriate, including provisions that afford them special rights and privileges, so long as such terms are not unreasonable.” (*Pinnacle, supra*, at p. 242; see also Civ. Code, § 4275(e)(2) [stating that courts may not “eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant”].)

In summary, the HOA's and Serrano's separate motions for summary adjudication against plaintiff's 1st C/A for declaratory relief are granted.

TENTATIVE RULING # 1: PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED. SERRANO EL DORADO OWNERS' ASSOCIATION'S MOTION FOR SUMMARY ADJUDICATION AGAINST THE FIRST CAUSE OF ACTION TO THE THIRD AMENDED COMPLAINT IS GRANTED. SERRANO ASSOCIATES' MOTION FOR SUMMARY ADJUDICATION AGAINST THE FIRST CAUSE OF ACTION TO THE THIRD AMENDED COMPLAINT IS GRANTED. A LONG CAUSE ORAL ARGUMENT HEARING HAS ALREADY BEEN SCHEDULED FOR 1:30 P.M., FRIDAY, JULY 8, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. PEREZ v. HERNANDEZ, ET AL., SC20180192

Hearing Re: Status of Bankruptcy

This matter was continued from March 25, 2022.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JULY 8, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. WEILAND v. EL DORADO COUNTY ASSESSMENT APPEALS BD., 22CV0341

Case Management Conference

This matter was continued from June 17, 2022. At the last hearing, the court directed the parties to meet and confer, then submit a stipulation and order regarding the briefing schedule.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JULY 8, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

4. MATTER OF WHITFIELD, 22CV0582

OSC Re: Name Change

TENTATIVE RULING # 4: PETITION IS GRANTED.

5. MATTER OF MUNOZ HERNANDEZ, 22CV0615

OSC Re: Name Change

TENTATIVE RULING # 5: PETITION IS GRANTED.

6. COSSOUL v. HEAVENLY VALLEY LP, ET AL., SC20180207**Morley Defendants' Motion for Determination of Good Faith Settlement**

Pending is a motion for determination of good faith settlement filed by defendants John Morley and Lynn Morley. (See Code Civ. Proc., § 877.6(a)(2).) The motion was served on the other parties via electronic transmission on June 13, 2022. None of the nonsettling parties filed an objection or motion to contest the settlement. (Code Civ. Proc., §§ 877.6(a)(2), 1005(b).) As such, the motion is granted.

TENTATIVE RULING # 6: MORLEY DEFENDANTS' MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT IS GRANTED. NO APPEARANCE IS NECESSARY.