SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT,

Plaintiff,

v.

PALOS VERDES HOMES ASSOCIATION, a California corporation; CITY OF PALOS VERDES ESTATES; and DOES 1 through 20,

Defendants.

Case No. BC431020

Assigned to the Honorable Richard Fruin, Department: 15

~~[PROPOSED]~~ **JUDGMENT FOR DEFENDANT PALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF**

This action was tried to the Court sitting without a jury on March 29 and 30 and April 1 and 4, 2011, with argument on April 14, 2011 and supplemental argument on May 20, 2011. Jeffrey L. Parker of the law firm Robinson & Parker, LLP represented plaintiff Palos Verdes Peninsula Unified School District (the "School District"). Andrew J. Haley and Andrew S. Pauly, of the law firm Greenwald, Pauly, Foster & Miller, A Professional Corporation, represented defendant Palos Verdes Homes Association (the "Homes Association").

Based on the oral and documentary evidence presented, the written and oral argument of counsel, and having already filed a Statement of Decision on September 22, 2011, and good

EXHIBIT D

cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment on the two causes of action in the School District's First Amended Complaint is entered *in favor of the Homes Association*, and *against the School District*, as follows:

1. This Judgment affects that real property located in the City of Palos Verdes Estates, County of Los Angeles, State of California commonly known as Lots C and D of Tract 7331 (the "Property") and legally described as:

LOTS C AND D OF TRACT 7331, IN THE CITY OF PALOS VERDES ESTATES AS PER MAP RECORDED IN BOOK 102 PAGE(S) 46 TO 50 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

AKA: APN 7542-002-900 AND 7542-002-901

2. As of the filing of the Complaint on February 1, 2010, the School District held and continues to hold its interest in the Property as a fee simple owner pursuant to that certain Grant Deed, dated December 7, 1938, from the Homes Association to the School District, recorded January 31, 1939 in Book 16374 Page 140 in the Official Records of Los Angeles County (the "1938 Grant Deed"), which Property was originally granted in fee simple to the Homes Association by Grant Deed, dated June 29, 1925 from Bank of America, as trustee, recorded June 30, 1925 in Book 4459 Page 123 in the Official Records of Los Angeles County (the "1925 Grant Deed").

3. The Property remains subject to the restrictions set forth in the 1925 Grant Deed (the "1925 Restrictions"), which 1925 Restrictions are valid and enforceable equitable servitudes against the Property enforceable by injunction by the dominant tenements of the 1925 Restrictions. The dominant tenements of the 1925 Restrictions are the residents of Tract 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of Rancho Palos Verdes).

4. The Property also remains subject to the restrictions set forth in the 1938 Grant Deed (the "1938 Restrictions"), including that the Property may not be used for any purpose other than for the establishment and maintenance of public schools, parks, playgrounds

and/or recreation areas. The 1938 Restrictions are valid and enforceable equitable servitudes against the Property enforceable by injunction by the dominant tenements of the 1938 Restrictions. The dominant tenements of the 1938 Restrictions are the residents of Tract 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of Rancho Palos Verdes).

5. The 1938 Grant Deed created a binding contract between the School District and the Homes Association, which contract restricted the use that the School District can make of the Property to only public schools, parks, playgrounds and/or recreation areas. This contract (including the use restrictions set forth therein) continues to remain valid and enforceable and a violation of the restrictions set forth in such contract would cause irreparable harm to the development plan for Tract 7331 – Lunada Bay – Palos Verdes Estate that can be judicially enjoined.

6. The Marketable Record Title Act, Civil Code §§ 880.020, *et seq.*, (the "MRTA") does not apply to the 1925 Restrictions or the 1938 Restrictions.

7. The Property also remains subject to all other conditions, covenants, restrictions and reservations of record, including, but not limited to, that certain Declaration No. 1 – Declaration of Establishment of Basic Protective Restrictions, Conditions, Covenants Reservations, Liens and Charges for Palos Verdes Estates, recorded July 5, 1923 in Book 2360, Page 231 of the Official Records of Los Angeles County (including all amendments thereto of record) ("Declaration No. 1") and that certain Declaration No. 21 of Establishment of Local Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges for Tract 7331 – Lunada Bay – Palos Verdes Estates, recorded September 29, 1924 in Book 3434 Page 165 of the Official Records of Los Angeles County (including all amendments thereto of record) ("Declaration No. 21").

8. Notwithstanding the School District's ownership of the Property, the Property remains subject to the same policies and procedures that the Homes Association applies to other properties in that area of the City of Palos Verdes as established under Declaration No. 1 and Declaration No. 21, including the Art Jury.

~~9. This Judgment shall be recorded and all of the terms and conditions herein shall run with the Property~~.

10. The School District shall take nothing on its First Amended Complaint.

11. The Homes Association is the prevailing party. The Court awards costs of $ 16,491.83 (MB) in favor of the Homes Association and against the School District pursuant to a timely filed and served Memorandum of Costs.

~~12. The Court awards reasonable attorneys' fees of $_____ in favor of the Homes Association and against the School District pursuant to a timely filed and served motion.~~

~~13. Interest on this Judgment shall accrue at the legal rate of 10% per annum from the date this Judgment is entered as allowed by law. The Homes Association shall further be entitled to all reasonable and necessary costs incurred in enforcing this Judgment as allowed by law.~~

DATED: September 22, 2011

Richard J. Fruin

HONORABLE RICHARD FRUIN
JUDGE OF THE SUPERIOR COURT

Respectfully submitted by:

DATED: August 22, 2011

GREENWALD, PAULY, FOSTER & MILLER,
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By: _____

ANDREW J. HALEY
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PALOS VERDES HOMES ASSOCIATION

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1299 Ocean Avenue, Suite 400, Santa Monica, California 90401-1007.

On August 22, 2011, I served the foregoing document(s) described as **[PROPOSED] JUDGMENT FOR DEFENDANT PALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed to the addressee(s) as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ BY MAIL: I caused such envelope to be deposited in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

☐ BY PERSONAL SERVICE: I personally delivered such envelope by hand to the offices of the addressee.

☐ BY FEDEX: The FedEx package tracking number for this envelope is _____, and the envelope was sent [mode] for receipt on [day], [date].

☐ BY ELECTRONIC MEANS: A courtesy copy of the above-referenced document was transmitted by ☐ facsimile and/or ☐ e-mail transmission; said transmission was reported as complete and without error.

☒ Executed on August 22, 2011, at Santa Monica, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

KATHY M. BARONE

Greenwald, Pauly, Foster & Miller A Professional Corporation

SERVICE LIST

Palos Verdes Peninsula Unified School District v. Palos Verdes Homes Association, et al.

Los Angeles County Superior Court, Case No. BC431020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CERTIFICATE OF SERVICE--I hereby certify that I delivered a true copy of the STATEMENT OF DECISION AND JUDGMENT FOR DEFENDANT ALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF to counsel named below by placing a copy thereof in a sealed envelope addressed as shown below in such manner as to cause it to be deposited with postage prepaid in the U. S. Mail on the date shown below in the ordinary course

DATED: September 22, 2011

JOHN A. CLARKE, Executive Officer/Clerk

By: R Klein

L. KLEIN, DEPUTY CLERK

DEPARTMENT 15

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15

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, Plaintiff, vs. PALOS VERDES HOMES ASSOCIATION, a California corporation; CITY OF PALOS VERDES ESTATES; and DOES 1 through 20, Defendants.	Case No. BC431020 **STATEMENT OF DECISION**

This dispute concerns whether Palos Verdes Peninsula Unified School District (the "School District") may sell two unimproved lots, known as Lots C and D, that were among thirteen parcels that the Palos Verdes Homes Association (the "Homes Association") deeded to the School District seventy years ago free of the restrictions that the Homes Association imposed in that **1938 Grant Deed**. The School District wants to sell the Lots for residential development; the deed restrictions require that the Lots be used for school sites or, alternatively, for recreational or park purposes. The School District could sell the two Lots for more than two million dollars if their use is not restricted.

The matter was tried to the court on March 29 and 30 and April 1 and 4, with final argument on April 14, 2011. Both parties submitted trial briefs. The court heard further argument on May 20, after which the School District and the Homes Association filed post-trial briefs. The matter stood

submitted on May 26, 2011.

Jeffrey L. Parker, of the law firm Robinson & Parker, LLP represented the School District at trial. Andrew J. Haley and Andrew S. Pauly, of the law firm Greenwald, Pauly, Foster & Miller, represented the Homes Association.

Signaling its importance to their organizations, Walker Williams, the School District Superintendent, attended the trial, as did Philip Frengs and Susan Van Every, respectively, the president and executive director for the Homes Association.

OPERATIVE COMPLAINT:

The First Amended Complaint ("FAC") is the operative complaint. Plaintiff School District therein seeks to quiet title to Lots C and D against any claim that the terms of the **1938 Grant Deed** and the earlier **1925 Grant Deed** restrict the use that may be made of the property. The School District makes three arguments:

(1) That the use restrictions that were imposed on the certain properties including Lots C and D by the **1925 Grant Deed** when Bank of America, as trustee,[1] conveyed them to the Homes Association were lost through the doctrine of merger when the Bank conveyed its residual interests to the Homes Association by its **1938 Quitclaim Deed.** See, FAC, para. 10, p. 5 @ 7-13.

(2) That any use restrictions on Lots C and D, arising from the **1925 Grant Deed** and the **1938 Grant Deed**, expired in 1987, by the operation of the Marketable Record Title Act ("MRTA"), Civil Code sections 885.010 - 885.070. See, FAC, para. 12.

(3) That any use restrictions on Lots C and D arising from the **1938 Grant Deed** are no longer enforceable "[1] given the overriding policy of permitting surplus school district property to be developed to the same extent as permitted on adjacent property, [2] given that other current and changed circumstances since recordation of the Deeds render enforcement of such restrictions inequitable and unreasonable, and [3] given that enforcement of such restrictions would not effectuate their purpose." See, FAC, para. 13.

[1] Palos Verdes Trust was the developer of Tracts 4400 and 6881; its conveyancing agent was Bank of America, as trustee for Palos Verdes Trust.

The Homes Association denied the material allegations in its answer and asserted various affirmative defenses.

CONCLUSIONS:

The court shall enter judgment for the Homes Association. The land-use restrictions imposed by the **1938 Grant Deed** remain valid and are judicially enforceable. The court's conclusions are supported by these findings:

The **1938 Grant Deed** created equitable servitudes in the title to Lots C and D that restricted their future use to school, recreational or park purposes. Lots C and D are among the properties that the Homes Association acquired title to through the **1925 Grand Deed**. That **1925 Deed** imposed land-use restrictions on the grantee, namely that the properties were to be used for "park purposes," and the later **1938 Grant Deed** referred to and incorporated those "conditions, restrictions and reservations of record" in its transfer to the School District. For that reason, Lots C and D remain subject to the "conditions, restrictions and reservations of record" imposed by the **1925 Grant Deed**, except as specifically modified in the **1938 Grant Deed.** The **1938 Grant Deed**, as the later instrument, is the operable deed. The equitable servitudes that are established in the **1938 Grant Deed** may be enforced by a court through equitable remedies.

The **1938 Grant Deed**, furthermore, constituted a contract between the Homes Association, as grantor, and the School District, as grantee, that restricted the use that the School District can make of Lots C and D to school use. The School District's sale of Lots C and D for residential use would violate the contract, and, because such a violation would cause irreparable harm to the Lunada Bay development plan, could be judicially enjoined.

The interest that Homes Association retained under the **1938 Grant Deed** is, moreover, a condition subsequent that is enforceable through an injunctive remedy.

The Marketable Record Title Act did not terminate the use restrictions that were created by the **1938 Grant Deed** because the MRTA does not apply to equitable servitudes, a condition subsequent or to contract rights that are enforceable by injunction.

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DISCUSSION:

A. Sequence of Deeds.

The parties, during the trial, educated the court about the development of the original Tracts 4400 and 6881--areas that are today the City of Palos Verdes Estates and the Miraleste district (part of the City of Rancho Palos Verdes overlooking San Pedro). This litigation involves Tract 6888 and Tract 7331--these are subdivisions within the boundaries of the original tracts that encompass the Lunada Bay area of Palos Verdes Estates. Lots C and D are within Tract 7331.

The parties stipulated that 91 documents would be received into evidence. The court, accordingly, has reviewed recorded deeds and declarations, minutes of meetings of the boards of the Homes Association, of the School Board and of other political bodies, title reports, committee reports, development diagrams, area maps, plot plans and photographs, old letters, news clippings and school budgets.

Probably because of the wealth of the documented, historical information, there is little factual dispute between the parties. Their dispute lies in the legal principles that apply to interpret the language of the deeds in the chain of title for Lots C and D.[2]

The court shall provide a brief historical recital that is needed to understand the parties' arguments. The dispute centers on three conveyances that are recorded in the following deeds:

1. The **1925 Grant Deed** between trustee Bank of America, as grantor, and the Homes Association, as grantee, conveying various properties within the Palos Verdes development subject to land use restrictions (Exh. 4);

2. The **1938 Quitclaim Deed** between trustee Bank of America, as grantor, and the Homes Association, as grantee, covering any residual interest the Bank as trustee retained in the properties it transferred to the Homes Association in the **1925 Grant Deed** (Exh. 5.); and

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[2] Lots C and D are located within the Lunada Bay development plan. Lot C fronts on Via Pacheco, and Lot D, behind to the east, fronts on Palos Verdes Drive West. The lots are each approximately 126 feet wide and 150 feet deep. See, FAC, para. 6. These Lots were originally envisioned to "form a mall, or connecting link, between the junior high and high school sites." See, Exh. 8, p. 14, Association's 11/3/38 minutes. Lots C and D have never been used by the School District for classrooms or for playing fields or other recreational uses. See, FAC, para. 7.

3. The **1938 Grant Deed** between the Homes Association, as grantor, and the School District, as grantee, conveying fee title to thirteen properties (totaling 120 acres) including Lots C and D subject to land use restrictions (Exh. 6.).

Tract 6888 and Tract 7331 were master-planned, in the 1920s, to provide park-like amenities for the benefit of its future residents. The developer, in 1923, published *Protective Restrictions Palos Verdes Estates (Tract 6888 and Tract 7331-Lunada Bay)* to explain the community plan and to establish the Homes Association and the Art Jury to implement the plan. The developer recorded the Protective Restrictions as declarations. Declaration No. 1, as recorded July 5, 1923, contains the restrictions to original Tracts 4400 and 6881. (Exh.2, p. PVHA 025.) Declaration 21, as recorded September 29, 1924, contains the restrictions applicable to Tract 7331 that contains, as mentioned, Lots C and D. (Exh. 2, p. PVHA 020.) (The Protective Restrictions, declarations and By-Laws for the Homes Association are all part of Exhibit 2. Exhibit 7 is a color-coded map of Palos Verdes Estates showing the land usages as established by the Protective Restrictions.)

Land use restrictions that were consistent with the Protective Restrictions were thereafter recited in the initial deeds for the properties that the developer sold. These restrictions, because they were recorded in the title chain, were intended to be binding on subsequent purchasers as equitable servitudes. Both of the experts who testified at trial--Karl Geier for the School District and Charles Hansen for the Homes Association--agree that the developer intended that the land use restrictions would "run with the land," that is, be binding on later purchasers as equitable servitudes.

The declarations placed Lots C and D into a Class F Use District, thus permitting them to be developed with a "single family dwelling." (Exh. 2, p. 038, Section 10.) The use restrictions on Lots C and D that are now in dispute were imposed in the **1925 Grant Deed** (Exh. 4) between trustee Bank of America and the Homes Association and the **1938 Grant Deed** (Exh. 6) between the Homes Association and the School District.

The **1925 Grant Deed**, by which trustee Bank of America conveyed various properties to the Homes Association, restricted the use of the conveyed properties as follows:

3. That the said realty is to be used and administered forever for park purposes ... for the benefit of the persons residing and living within the boundaries of the property known a ... "Palos Verdes Estates" under such regulations ... as may from time to time hereinafter be established by the Park Department of Palos Verdes Homes Association for the purpose of safeguarding said realty ... and for the further purpose of protecting the residents of the said Palos Verdes Estates from any uses of or conditions in or upon said realty which are, or may be, detrimental to the amenities of the neighborhood;....

The Bank of America, as trustee, retained under the **1925 Grant Deed** an express reversionary interest in the properties that it conveyed to the Homes Association. A reversionary right (now called a power of termination) provides to a grantor a means to enforce any land use restrictions that are imposed by deed; that is, if the grantee or a subsequent purchaser disregards the deed restrictions, the grantor, or its successors, could take back the ownership of the land.

By the **1938 Quitclaim Deed** the Bank of America, as trustee, transferred to the Homes Association any interest it retained in those properties which, in 1925, it had granted to the Homes Association. The intent of this **1938 Quitclaim Deed** was to transfer to the Homes Association any reversionary rights that the Bank still held to enforce the land use restrictions in the **1925 Grant Deed**.

The Homes Association, in 1938, transferred thirteen of the properties it had received from the Bank of America to the School District to be used as future school sites. The transfer was recorded in the **1938 Grant Deed**. That **1938 Grant Deed** included the restrictions over Lots C and D now in issue. The **Deed** reflects the School District paid $10 to the Homes Association for the 120 acres. The Homes Association was motivated, in part, to avoid any further obligation to pay property taxes to Los Angeles County on the properties it transferred to the School District. See,

Exh. 8, p.16-17, Association 11/30/38 minutes.[3]

The Homes Association's board, as it considered the transfer to the School District, deemed it prudent to request a quitclaim deed from the Bank to secure any interest the Bank retained in the properties that were to be conveyed to the School District. See, Exh. 8, p. 2 and p. 21, the Association's 1/18/38 and 2/27/40 minutes. The **1938 Quitclaim Deed** and the **1938 Grant Deed**, therefore, are part of the same transaction.

The **1938 Grant Deed** (Exh. 6) enlarges the uses permitted on the properties originally conveyed by the **1925 Grant Deed**. The **1925 Deed** restricted the use of the properties conveyed to park purposes, while **the 1938 Grant Deed** additionally allowed school use. The **1938 Grant Deed** reads in applicable part:

> *PALOS VERDES HOMES ASSOCIATION, a California corporation, in consideration of Ten Dollars ($10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby GRANT TO*
>
> *PALOS VERDES SCHOOL DISTRICT OF LOS ANGLES COUNTY*
>
> *all that real property in the County of Los Angeles, State of California, described as follows:*
>
> * * * * * *
>
> *Lots A, B, C and D of Tract 7331*
>
> * * * * * *
>
> *SUBJECT TO State and County taxes now due and/or delinquent;*
>
> *AND SUBJECT TO conditions, restrictions and reservations of record; and to the express condition that said realty shall not be*

[3] The Homes Association, in 1940, transferred the remainder of the properties it had received by the **1925 Grant Deed** to the newly formed City of Palos Verdes Estates. (Exh.13.)

used for any other purposes than for the establishment and maintenance of public schools, parks, playgrounds and/or recreation areas, and shall not be sold or conveyed except subject to conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds; provided that easements may be granted over portions of said reality to the public for parkway and/or street purposes.

IN WITNESS WHEREOF, PALOS VERDES HOMES ASSOCIATION has caused this deed to be duly executed, by its officers thereunto authorized, this 7th day of December, 1938.

A resolution of the Board of Trustees of the Palos Verdes School District was appended to the **1938 Grant Deed**. It accepted the deed conditions. It reads:

Be it resolved that the Board of Trustees, Palos Verdes School District, approve and hereby accept the transfer of the seven school sites described in the deed duly executed by the Palos Verdes Homes Association to the above named school district on the 7th day of December, 1938.

The **1938 Grant Deed** did not expressly reserve a right of reversion in the Homes Association to enforce the use restrictions imposed by that **1938 Grant Deed,** but the **1938 Deed** does impose a condition subsequent that may be used to enforce the use restrictions.

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B. Legal Arguments.

The School District advances two main arguments for the termination of the use restrictions contained in the **1925 Grant Deed** and the **1938 Grant Deed**. Its first argument is that when the Homes Association, through the **1938 Quitclaim Deed**, acquired the reversionary interest in the use-limited properties that it conveyed to the School District by the **1938 Grant Deed**, the subservient interest (the fee interest that was subject to the use restrictions) and the dominant interest (the fee interest having the right to enforce the use restrictions) merged by operation of law, so that the Homes Association's transfer, later in 1938, of the properties to the School District was free of any enforceable land use restriction contained in the **1925 Grant Deed**. (This argument, however, is directly contrary to the express provisions in the **1938 Grant Deed**. That **Deed** incorporates by reference the "conditions, restrictions and reservations of record" and further provides that the properties conveyed "shall not be sold or conveyed except subject to the conditions, restrictions and reservations of record" and "except to a park commission or other public body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds." This language from the **1938 Grant Deed** has the effect of restating all of the land-use restrictions of record.)

The School District next argues that all use restrictions in the **1938 Grant Deed** (and any in the **1925 Grant Deed** that were not merged with the dominant interest and, thus, lost by the **1938 Quit Claim Deed**) were extinguished by Civil Code section 885.060(b), part of the Marketable Record Title Act. Section 885.060(b) reads:

> (b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

The School District's arguments are individually addressed below.

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1. As between the parties to the 1938 Grant Deed–the School District and the Homes Association--the use restrictions on Lots C and D are enforceable by contract.

The language of the **1938 Grant Deed** imposes use restrictions on the properties that the Homes Association conveyed to the School District in unambiguous language:

> *PALOS VERDES HOMES ASSOCIATION ... does hereby GRANT TO*
>
> *PALOS VERDES SCHOOL DISTRICT OF LOS ANGLES COUNTY*
>
> *all that real property ...*
>
> * * * * * *
>
> *Lots A, B, C and D of Tract 7331*
>
> * * * * * *
>
> *AND SUBJECT TO conditions, restrictions and reservations of record; and to the express condition that said realty shall not be used for any other purposes than for the establishment and maintenance of public schools, parks, playgrounds and/or recreation areas, and shall not be sold or conveyed except subject to conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds; ....*

The School District accepted the grant subject to the deed conditions by a duly adopted resolution that is annexed to the recorded **1938 Grant Deed**. The resolution is quoted above. (Exh. 6.) The minutes of the School District Board thirty-five years later, on January 31, 1974, acknowledged that promise, saying: "All the conditions in the original covenant were accepted by the school district." (Exh. 17 at p. SD535.)

The original parties to the **1938 Grant Deed** are the plaintiff and defendant now before the

court. The intent of those parties, at the time the conveyance was made, is clear and documented: the properties the Homes Association conveyed were to be used by the School District for school, recreational or park purposes.

The land use restrictions of the **1938 Grant Deed** are enforceable as a contract, as between the original parties to the contract, whether or not those conditions are also enforceable as equitable servitudes against future owners of Lots C and D. The leading treatise on California real estate advises: "When a covenant is contained in a deed or in a separate agreement between the original property owners, the parties are in privity of contract and it is immaterial *as to them* whether the covenant 'runs with the land,' since the covenant can be enforced between the parties under the usual principles of contract law." 8 Miller & Starr, Cal. Real Estate (3rd ed. 2009) section 24.2 (emphasis original). The Miller & Starr treatise cites for that proposition numerous decisions including Berryman v. Hotel Savoy Co. (1911) 160 Cal.559, 564 and 573 ("a covenant not running with the land may be for the benefit of property owned by the persons who may enforce it").

So, even if the Homes Association in its **1938 Grant Deed** did not expressly retain a power of termination to enforce the use restrictions provided in the **Deed**, the Homes Association could seek injunctive relief against a threat by the grantee to abrogate the restrictions. Deed restrictions are traditionally enforced through injunctive suits. See generally, Mullally v. Ojai Hotel Co. (1968) 286 Cal.App.2d 9; also 12 Witkin, Summary of California Law (10th ed.2005), Real Property, sections 440 and 451. Courts, of course, will decline to issue an equitable remedy to enforce unreasonable restrictions, but there is no reason to think that a court will be reluctant to enforce the deed restrictions that the School District accepted in the **1938 Grant Deed**. The School District in accepting the properties for school sites expressly agreed that the properties including Lots C and D "shall not be sold ... except subject to the conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law" so that the properties shall be maintained as "public parks and/or playgrounds." The School District, in accepting Lots C and D, thus, assumed "a trust-like obligation" that is readily enforced in equity. "What is relevant is a public entity's heightened duty to act equitably when it accepts a conditional gift from a donor for the public's benefit." County of Solano v. Handerly (2007) 155 Cal.App.4th 566, 577 (deeds

conveying properties for fair grounds will be strictly construed to prevent the county from unilaterally changing the use).

The Marketable Record Title Act does not abrogate the Homes Association's right to enforce the **1938 Grant Deed** in contract because the MRTA, in its statutory language and legislative history, applies only to use restrictions that are sought to be enforced in equity against certain restrictions that are recorded. The MRTA has no application to deed use restrictions that are sought to be enforced by the original grantor against the original grantee. The use restrictions, in that circumstance, are legal rights that the original contracting parties bargained for.

2. The use restrictions on Lots C and D created by the 1938 Grant Deed are equitable servitudes and may be enforced by equitable remedies.

A grantor and grantee to a real estate conveyance may create land use limitations that are binding on future owners of the property by the language that is put in a recorded deed or declaration. Such limitations are called "equitable servitudes." Such deed limitations are enforceable against subsequent purchasers by the grantor, the grantor's successors, or benefitted property owners, if three conditions are met. The three conditions are that (1) the purchaser must have notice of the restrictions, (2) the restrictions must be part of a common plan including both properties, and (3) the parcel that is benefitted (the "dominant tenement") must be adequately identified in the public record. See, Citizens for Covenant Compliance v. Anderson (1995) 12 Cal.4th 345 (land use restrictions that create a common plan and are recorded in subdivision declarations, though not in subsequent deeds, are valid, "run with the land," and may be enforced through injunctive relief).

These conditions are met for the restrictions that the Homes Association imposed by the **1938 Grant Deed**. That Deed declares that the thirteen parcels conveyed, those including Lots C and D, were to be used for school sites or, alternatively, recreational or park purposes. The School District expressly agreed to such use restrictions in its resolution that accepted the properties. The School District argues that the **1938 Grant Deed** is too cursory to establish that its restrictions are part of a common plan. The court finds to the contrary because the **1938 Grant Deed** incorporates by reference "conditions, restrictions and reservations of record." There was "of record," i.e. in the title

chain, the declarations that contained the plan elements for the master-planned community. The **1925 Grant Deed** furthered that plan in conveying to the Homes Association properties that were intended in the master plan for schools and parks. The Homes Association, which was created in Declaration No. 1 (see Exh. 2) to protect the plan, represents the benefitted property owners and satisfies the requirement that the dominant tenement be identified.

Land use restrictions that are equitable servitudes may be enforced by injunctive relief, see Citizens for Covenant Compliance v. Anderson, supra, and it not necessary that the plaintiff in seeking injunctive relief also have a reversionary interest in the servitude property.

The School District's argues that a merger occurred when the Homes Association received from Bank of America, as trustee, the fee title, through the **1925 Grant Deed**, and later received through the **1938 Quitclaim Deed** any residual reversionary interest in the properties conveyed by the **1925 Grant Deed**, resulting--the School District argues-- in the loss of the reversionary power to enforce the land use restrictions. That argument, even if were correct, would not deprive the Homes Association of its independent ability to enforce the equitable servitudes by seeking injunctive relief. The court's view, however, is that any enforcement power available to the Homes District was not lost or diminished when it received the **1938 Quitclaim Deed**. Whether any merger occurs, so as to extinguish a subordinate real estate interest, depends on whether the parties intended to extinguish the subordinate interest. See, Sheldon v. La Brea Materials Co. (1932) 216 Cal 686, 692. The School District has offered no evidence that the Homes Association intended that the **1938 Quitclaim Deed** would reduce the enforcement powers that were then or subsequently available to it as a grantor to prevent violations of deed restrictions. The evidence, in fact, is contrary to the School District's position. The **1938 Quit Claim Deed** and the **1938 Grant Deed** were part of the same transaction, the purpose of which was to transfer to the School District properties that would be developed, as needed, into school sites. The Homes Association was deliberate in drafting the **1938 Grant Deed** to impose use restrictions on the properties it conveyed to the School District and even to specify that the School District could not sell or otherwise convey any of the properties except with use restrictions and even then only if conveyed to a public agency to maintain any such property as "public parks or playgrounds." Since the Homes Association solicited the **1938 Quit**

Claim Deed with the intention of conveying the thirteen properties to the School District in a manner that would restrict the future use of the properties, it is unlikely Homes Association intended that the **1938 Quit Claim Deed** would effect a merger between the dominant and servient interests so as to extinguish the enforcement powers that the Homes Association would need to have in order to insure that its grantee would comply with the use limitations.

The School District has not carried its burden of establishing that the parties to the **1938 Quit Claim Deed** intended that the transaction would extinguish any legal enforcement powers held by the Homes Association as the dominant tenement interest.

In summary, the **1938 Grant Deed** created equitable servitudes over Lots C and D for school, recreational and park purposes that may be equitably enforced by the Homes Association.

3. The Marketable Record Title Act did not nullify the equitable servitudes placed on Lots C and D by the 1938 Grant Deed.

The School District argues that any equitable servitudes imposed by the **1938 Grant Deed** were terminated, in 1987, by operation of the Marketable Record Title Act ("MRTA"). MRTA (Civil Code section 880.020 et seq.) provides that certain land use restrictions that are recorded in the title chain, specifically including reversionary interests, are to be terminated 30 years after their creation unless within five years from the enactment of MRTA a notice of intent to preserve is recorded in the chain of title. The statute provides: "Recordation of a notice of intent to preserve the interest in real property after the interest has expired ... does not preserve the interest." Civil Code section 880.310(a). Thus, the School District argues that any use restrictions on Lots C and D to the extent enforceable under the **1938 Grant Deed** was lost in 1987 when the Homes Association failed to record a notice of intent to assert the restrictions found in the **1938 Grant Deed**.

MRTA does not apply to the restrictions that were imposed under the **1938 Grant Deed**, and, therefore, does not terminate them for several reasons.

The interest that the Homes Association retained under the **1938 Grant Deed** was a condition subsequent rather than a covenant enforceable only through a reversionary right. The condition subsequent was not lost through the operation of the Marketable Record Title Act. The condition

subsequent is enforceable through an injunction remedy.

Secondly, the **1938 Grant Deed** imposed a contract restriction on the use that the School District could make of the real properties that the Homes Association transferred to the School District. The contract limitations remain in effect and are enforceable against the School District by an injunctive action. Contract limitations between parties in privity are not terminated by the Marketable Record Title Act. MRTA was enacted to clear property titles that are "unreasonable restraints on alienation and marketability of real property because the interests ... have been abandoned or have otherwise become obsolete." Civil Code section 880.020(a)(1). As between the original parties to the **1938 Grant Deed** the conditions under which the Homes Association transferred Lots C and D (and the other properties) are neither abandoned nor obsolete. The purposes that animate the property restrictions which the Homes Association imposed still remain. The Homes Association is asserting those purposes in this litigation.

Additionally, Civil Code section 880.240 states that "an interest of the state or a local public entity in real property" are not subject to the expiration or to expiration of record under the MRTA. The evidence received at trial included the fact that the City of Palos Verdes Estates owns numerous properties within the municipal boundaries, e.g. see Exhs. 12 and 13, some of those being properties it received from the Homes Association under the 1940 Grant Deed (see, Fn. 3, supra). As to those properties the City is a dominant interest holder with a right to enforce land-use restrictions that have been imposed by deed limitations on servient interest properties. MRTA, by its plain language, does not operate to terminate the use restrictions imposed on Lots C and D because those use restrictions are subservient to the dominant interest in the properties the City received from the Homes Association under the 1940 Grant Deed.

Finally, the Legislature, in 1990, adopted a clarifying amendment to the Marketable Record Title Act that demonstrates that the Legislature never the intended the MRTA should be construed to void equitable servitudes if those restrictions were enforceable by injunction. Civil Code section 885.060(b), as adopted originally with the MRTA in 1982, provides:

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> (b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

Responding to criticism that section 885.060(b) could be read more broadly than was originally intended, the Legislature in 1990 enacted a subdivision (c) to better specify circumstances that were not within the MRTA. Section 885.060(c) provides:

> (c) However, subdivision (b) does not apply to a restriction for which a power of termination has expired under this chapter if the restriction is also an equitable servitude alternately enforceable by injunction. Such an equitable servitude shall remain enforceable by injunction or any other available remedies, but shall not be enforceable by a power of termination. This subdivision does not constitute a change in, but is declaratory of the existing law.

For the Legislature to determine that subdivision (c) is declaratory of existing law clearly means, as a matter of statutory interpretation, that it was not the Legislature's intent in 1982 in adopting Civil Code section 885.060 that equitable servitudes that were enforceable by equitable remedies would be terminated.

The School District's argument that the Legislature's enactment of subdivision (c) could not resurrect what the Homes Association had already lost--an equitable servitude that was enforceable by an injunction--requires the conclusion that the Legislature intended to terminate such restrictions in its initial legislation. The Legislature, however, said in 1990 that such was not its intent. The School District's argument, furthermore, would have far-reaching applications. It would mean that all equitable servitudes created in the **1925 Grant Deed**, as well as the **1938 Grant Deed**, were nullified by the MRTA because there was no filing of any intent to preserve the restrictions for any

deed issued pursuant to the master plan for Palos Verdes Estates and Miraleste. The court, for these reasons, rejects the School District argument that the 1990 amendment to the MRTA (that is, the adoption of subdivision (c) to Civil Code section 885.060), is to be interpreted as a narrowing of the scope of the MRTA as adopted in 1982. Civil Code section 885.060 was always to be interpreted not to apply to deed restrictions that are enforceable by equitable, that is, by court-supervised, remedies.

For the same reasons, the use restrictions in the **1925 Grant Deed**, except as modified by the **1938 Grant Deed**, are also unaffected by MRTA and remain enforceable as equitable servitudes.

4. Neither "changed circumstances" nor statutory expressions of public policy nullify the deed restrictions applicable to Lots C and D.

Deed restrictions that impede development may be judicially abrogated "when a change in the neighborhood practically defeats the purpose of the restrictions and they are of no further benefit to the remaining property owners." Lincoln Sav. & Loan Assn. v. Riviera Estates Assn. (1970) 7 Cal.App.3d 449, 460. That is not the case here: the development of the Lunada Bay "neighborhood," from its beginnings in the 1920s, was implemented through a master plan.

The properties adjacent to Lots C and D were built out with residential construction after World War II, but that was envisioned in the original master plan. There have been, therefore, no "changed circumstances" "in the neighborhood" that have made the restrictions on the development of Lots C and D obsolete or inconsistent with the master plan.

Lots C and D may have been envisioned as providing a corridor, perhaps a student walkway, between the high school and the intermediate school. That use has not been realized, particularly as the City, in 2008, posted a no-crossing sign at Lot D to deter the mid-block crossing of heavily-traveled Palos Verdes Drive West. (See, Exh. 44.) Lots C and D, however, in their unimproved state, do provide open space and continue to be available for future school, recreation or park use--a high priority to the area residents and defended here by the Homes Association. A judicial termination of the **1938 Grant Deed** restrictions would foreclose the future development of Lots C and D for public purposes. The School District does not offer justification for the judicial abrogation

of the deed restrictions under any of three criteria that were articulated by the Supreme Court in Nahrstedt v. Lakeside Village Condominium Association (1994) 8 Cal. 4th 361. The Nahrstedt Court, speaking of restrictions in a common interest development, held that courts will enforce an equitable servitude "unless it violates public policy, it bears no rational relationship to the protection, preservation, operation or purpose of the affected land, or its harmful effects on land use are otherwise so disproportionate to its benefits to affected homeowners that it should not be enforced." Id. at 386. Even though Nahrstedt arose under the Davis-Sterling Common Interest Development Act (enacted in 1985), the Nahrstedt decision provides guidance for a court in ruling on whether a servitude that is imposed on one property for the benefit of nearby property owners should be preserved.

The School District points out that the Legislature has authorized the sale of surplus school property to supplement strained school budgets. See, Education Code sections 17455 and 17485 (enacted in 1996) and Government Code section 65852.9 (enacted in 1985). The Palos Verdes Peninsula Unified School District, like all school districts in California, has received inadequate funding from the State to fully accomplish its educational mission. The court, however, cannot accept the School District's implicit argument that these legislative enactments constitute a public policy that a school district may set aside deed restrictions applicable to surplus properties in order to realize a greater sale price. The court does not find any legislative intent in the cited statutes to nullify any equitable servitudes that encumbered the properties when the School District acquired them and particularly so as the School District acquired them through a donative deed. That argument is inconsistent with public policies expressed in County of Solano v. Handlery, supra.

The School District argues that the **1938 Grant Deed** was not donative, as the District paid $10 for the properties, and, therefore, the conveyance did not trigger the public policies associated with a gift or public dedication. See, Plt. Objections, filed 8/31/11, p.10. The $10 that the School District paid for the thirteen properties more probably was intended to satisfy the formal requirements for making a valid contract--a proverbial "peppercorn" to satisfy the consideration element for a binding contract--than any estimate of the properties' value. The Homes Association, in transferring the properties to the School District, avoided future property taxes, but that is

immaterial to whether the transfer was donative. A donor of real estate to a public agency will always avoid future property taxes (and likely obtain an income tax deduction as well).

The court finds instead, based on the language of the **1938 Grant Deed** and the Homes Association board minutes relating to the subject, that the Homes Association's intent was to make a gift of the properties to the School District so that they would be available as school sites as the community grew to fill out the master plan. The Association's board minutes reflect that the Association was motivated to offer the thirteen properties to the School District "in order to eliminate the possibilities of these properties passing into private hands by reason of tax delinquency." (See, Exh. 8, p. 17, referring to board discussion on 11/3/38.) The Homes Association then set in motion the legal process to transfer the properties to the School District but only after imposing restrictions in the deed so that the properties would be used as school sites and, if that purpose was not realized, that the properties could be conveyed to a public agency for use as "public parks or playgrounds." This scheme reflects a donative purpose on the part of the Homes Association.[4]

5. The Home Association's affirmative defenses are not material to the court's decision.

The court, having ruled that the Homes Association may enforce their deed restrictions on Lots C and D, finds it unnecessary to discuss the affirmative defenses that the Association raised in their answer, e.g. estoppel, laches and statute of limitations. See, Ans., filed April 5, 2011. The Homes Association argues, in support of its estoppel and laches defenses, that the School District's delay in filing this action to terminate the use restrictions established in the **1938 Grant Deed** prejudiced its ability to establish the parties' intent in that transaction through live testimony. Particularly, the Homes Association argues, the parties' intent would be determinative as to (1)

[4] The minutes further reflect a discussion that caused the Homes Association board to conclude that the properties could be transferred to the School District only if the transfer was without consideration. Otherwise, the board was told, a consent (waiver) to the transfer would be required from the "Trustor and Trustee of the Palos Verdes Trust." (See, Exh. 8, p. 17, referring to board discussion on 11/30/38.) This is further evidence that the $10 that was recited in the **1938 Grant Deed** is not to be thought of as being inconsistent with the transfer as being a gift from the Homes Association to the School District.

whether the parties intended the transaction to effect a merger and, thus, a resultant loss of a reversionary interest; and (2) whether the parties believed the Homes Association, as grantor, could enforce the deed limitations as equitable servitudes.

The School District, as long ago as 1981 received a legal opinion that the use restrictions "may be invalid and which outlined steps to take to change or challenge the Restrictions." Exh. 28, p. 2. The School District forwarded the legal opinion, when received, to the Homes Association and to the City. (See, Exh. 21 at SD565 and SD566-67.) The court does not know whether witnesses to the 1938 transaction between the Homes Association and the School District were alive 30 years ago. The court, in any event, has determined that the transaction documents are sufficient to resolve any questions as to the intent of the 1938 transaction.

ENTRY OF JUDGMENT:

The court on August 16, 2011 served its Statement of Tentative Decision. Both parties timely served requests for its modification. The court has incorporated revisions in this Statement of Decision that were suggested by the parties' comments to the Statement of Tentative Decision.

The grants judgment for the Homes Association as to plaintiff's cause of action to quiet title to Lots C and D.

The School District pleaded a second cause of action for declaratory relief to compel the City of Palos Verdes Estate to rezone and permit the development of Lots C and D as four single family residential lots. The School District dismissed the second cause of action before trial.

The Homes Association submitted, as ordered, a form of proposed judgment, to which the School District filed its objections. The court agrees with the objections to the extent that it has deleted from the proposed judgment paragraphs 9, 12 and 13 and has modified slightly paragraph 5. As so modified, the court has signed, entered and herewith serves a copy of Judgment for Defendant Palos Verdes Homes Association for Quiet Title and Declaratory Relief.

The court's deletion of paragraph 12 from the proposed judgment that provided that the Homes Association shall be entitled to reasonable attorney's fees does not determine that defendant Homes Association is not entitled to recover attorney's fees. The Homes Association may file a

motion seeking reasonable attorney's fees and therein establish any basis for their recovery.

The parties are directed to retrieve the exhibits and exhibit binders that have been retained by the Clerk promptly after the court signs and enters the Judgment.

The Clerk is directed to serve this Statement of Decision, together with the Judgment, by U.S. Mail on this date.

Dated: September 22, 2011

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

RLF/ep/vj/ep
Palos Verdes.sd
9-22-11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CERTIFICATE OF SERVICE--I hereby certify that I delivered a true copy of the STATEMENT OF DECISION AND JUDGMENT FOR DEFENDANT ALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF to counsel named below by placing a copy thereof in a sealed envelope addressed as shown below in such manner as to cause it to be deposited with postage prepaid in the U. S. Mail on the date shown below in the ordinary course

DATED: September 22, 2011

JOHN A. CLARKE, Executive Officer/Clerk

By: L Klein

L. KLEIN, DEPUTY CLERK

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