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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO, CENTRAL DIVISION

ARROWHEAD WOODS ARCHITECTURAL COMMITTEE, INC., a California corporation, Plaintiff, v. HERMINE MURRA, and all persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the Complaint, named as DOES 1 to 50, inclusive Defendants.	Case No.: CIVDS 1405048 **MOTION IN LIMINE RE STATUTE OF LIMITATIONS AND LACHES FOR CHALLENGING EXTENSION OF DECLARATION OF RESTRICTIONS, APPLICABILITY OF CORPORATION QUIT CLAIM DEED AND WAIVER** TSC: January 26, 2017 Time: 8:30 a.m. Dept: S-26

AUTHORITY FOR MOTION IN LIMINE

In *Kelley v. New West Financial Services* (1996) 49 Cal.App.4th 659, 669, the Court stated that a Motion in Limine may be brought for trial management purposes. This Motion in Limine is brought to address the issues of (1) the Statute of Limitations and Laches to challenge equitable servitudes, (2) applicability of Corporation Quitclaim Deed to Defendant's property and (3)

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Waiver by Defendant of any right to contest the property restrictions. This Motion could be more applicable depending on the Court's decision of which issues are decided by the Court and the jury.

INTRODUCTION

Defendant has not filed a challenge to the validity of the extension of Plaintiff's authority to enforce the Declaration of Restrictions. The Second Amended Complaint asks for an injunction and damages against Defendant for her unauthorized cutting down of two living trees on her North Bay Road property without first obtaining permission from Plaintiff as required in the Declaration of Restrictions. The Declaration of Restrictions was recorded in 1968. The Declaration of Restrictions provides that the authority of Plaintiff to enforce restrictions would expire on December 31, 2010 unless extended by a vote of 55% of the property owners. Prior to December 31, 2010, Plaintiff recorded a Certification of Amendment of Declaration of Restrictions, which recited that 55% of the property owners had voted to extend the Declaration of Restrictions.

Although not yet filed, Plaintiff expects Defendant will challenge the extension of the Declaration of Restrictions, even though the Statute of Limitations has expired for the time in which they have to make such a challenge. Under *Code of Civil Procedure* Section 343, the time to bring a challenge to an extension of an equitable servitude is 4 years from the date the extension was recorded. The extension was recorded on December 15, 2010. Defendant will have waited until trial to bring her challenge, which is time barred as discussed below.

Defendant bought her property after the extension was recorded.

Defendant's property is also subject to a Corporation Quitclaim Deed requires Defendant to request permission from Plaintiff before cutting any tree.

Plaintiff is the successor to the Architectural Committees in both the Declaration of Restrictions and Corporation Quitclaim Deed

FACTS

Defendant is the owner of two single family residences located in Arrowhead Woods, Lot 289, Tract 7074, 27568 North Bay Road, and Lot 18, Tract 53, 27981 Lakes Edge Rd., Lake Arrowhead.

In August 2013, Defendant cut down a living oak cedar tree cut down on her property. As measured at a height of between 4 and 5 feet, at the stump, the tree was 18 inches in diameter. The tree was healthy and appeared to be free of disease of any serious defects. Six months later, she cut down a larger oak tree on her North Bay property, this one 34 inches in diameter. One year later, Defendant cut down eight cedar trees on her Lakes Edge property, from six to twenty-six inches in diameter.

Defendant bought her North Bay property 2-1/2 years after the extension was recorded. She bought with at least constructive knowledge of the extension.

1. The Declaration of Restrictions was established for the benefit of all of the community.

The Defendants' property is subject to the Declaration of Restrictions recorded on May 1964 for Tract 7074 (Exhibit "1"). On Page 1, Title Insurance and Trust Company ("Declarant") stated that the Declarant was the owner of Tract 7074 and desired to establish "a general plan for the improvement and development of the" tract. The Declarant desired to record the Declaration of Restrictions to establish a "general plan for the protection, maintenance, development and improvement of said Tract 7074". The restrictions were to apply not only to the Declarant, but also "each and every future owner thereof"; the restrictions were for the benefit of "each and every future owner", and were to "run with and the binding upon said tract". The restrictions could be enforced by the Declarant's assignee on page 19, XIV.

In III(b) of the Declaration of Restrictions, an Architectural Committee was established. Article III provided that no building, fence or other structure could be constructed without prior approval of the Architectural Committee, which had the power to approve or disapprove of the plans, including elevations, colors, hedges, wells and fences.

Article III (h) provided as follows: "The powers and duties of the Architectural Committee shall cease after 2010, unless prior to said date and subject thereon, a written instrument shall be executed by record owners of a majority of the lots in said Tract and duly recorded, appointing a representative or representatives who shall thereafter exercise the same powers, and authorities previously emphasized by the Architectural Committee and providing procedure for appointing his or their successors".

Article VII provides: The owner shall keep their property "free and clear of all weeds and rubbish and . . .keep the premises in good order."

"Declarant asserts that any grant or conveyance of any lot in said Tract 7074, or any part thereof, shall be made upon the following covenants to be observed and accepted by the grantees, which shall also be conditions subsequent:

Such grantees shall not, and shall not permit any person to remove, destroy or materially change the shape of any trees growing on said Tract without prior consent of grantor, or its successors and assigns, or the Architectural Committee acting in its assigned capacity. (Emphasis added)

Such grantees will do whatever is necessary for the maintenance, care, growth and development of each and any such tree and will for such purpose extend such funds and engage such expert personnel as may be reasonable and necessary adequately to maintain and care for such trees."

Article XI provides as follows:

"(a) The covenants, conditions and restrictions herein contained shall run with said land and shall be binding and in full force and effect until December 31, 2010 for the mutual benefit of all the lots and building sites in said Tract.

(b) ***At any time*** prior to December 31, 2010, the owners of record of lots or building sites in said Tract, subject to this declaration, having an aggregate area equivalent to not less than 55% of the total area of all of said property, may extend the term during which said covenants, conditions and restrictions shall bind and affect said Tract to December 31, 2025, by executing and acknowledging an instrument in writing to that effect which shall be duly recorded with the County Recorder of San Bernardino, California.(emphasis added)

(c) The easements and renovation contained shall be perpetual, unless released by the declarant grantor and/or those persons or corporations with whom such rights have been assigned or conveyed as herein provided."

Article XII(b) provides that: "**The violation or breach of any of the covenants, conditions, restrictions or reservations herein** contained **shall give . . . the Architectural Committee. . . the**

right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the covenants, conditions, restrictions or reservations to prevent or enjoin them from so doing, to cause said violation to be remedied, or to **recover damages for said violation**." (Emphasis added.)

"(d) In any legal or equitable proceeding for the enforcement or to restrain the violation of any provision of this Declaration, the prevailing party shall be entitled to recover such reasonable attorney's fees as the Court shall award from the unsuccessful party or parties."

"(e) Remedies contained and set forth in this Article XII shall be cumulative and not exclusive."

Article XIII provides that "The owners of record of lots or building sites in said Tract having an aggregate area equivalent to not less than 55% of the total area involved in said property may, at any time, with the written consent and approval of the Los Angeles Turf Club, Inc. or its successors in interest . . .modify, amend, cancel or annul with respect to all of said Tract, all or any of the covenants, conditions and restrictions contained in this Declaration and any supplement or amend thereto, by instrument in writing signed by said owners and acknowledged by them so as to entitle it to be recorded in the Office of the County Recorder in the office of the County of San Bernardino, California."

Article XIV provides: "Any and all of the rights, powers and reservations of Declarant and/or Lake Arrowhead Development Co. and/or the Architectural Committee herein contained, may be assigned to any other corporation or association which will assume the duties of declarant and/or Lake Arrowhead Development Co. and/or the Architectural Committee. . . and upon such corporation or association evidencing its consent in writing to accept such assignment and assume such duties it shall, to the extent of such assignment, have the same rights and powers and shall be subject to the same obligations and duties as given to and assumed by declarants and/or Lake Arrowhead Development Co. and/or the Architectural Committee herein."

Plaintiff is the successor to the Architectural Committee established in the Declaration of Restrictions by two Assignments and Quitclaim of Rights (Exhibits 10 and 11). The declarant in the Declaration of Restrictions was Title Insurance and Trust Company (Exhibit 1, page 1). The

declarant assigned to Plaintiff and Arrowhead Lake Association "all powers relating to the restrictions on use of property with the tracts set forth below (including Tract 7074, the Tract in which Defendants lot is located)," which included "restrictions on removal . . . of trees" by an Assignment and Quitclaim of Rights Contained in Declaration of Restrictions (Exhibit 11). Arrowhead Lake Association executed a Corporation Quitclaim Deed which assigned all of the right title and interest in Arrowhead Woods to Plaintiff, which included the right of "enforcement . . . upon breach of covenants, conditions and restrictions imposed by (Arrowhead Lake Association) or its predecessors (Exhibit 10).

Testimony by Bradley L. Brier (Exhibit 62) on page 2, paragraph 3, establishes that the property rights conveyed to Plaintiff include the Defendants' property. The same description appears in the Corporation Quitclaim Deed (Exhibit 8), Corporation Quitclaim Declaration (Exhibit 10) and Grant Deed (Exhibit 5, #2-3). The chain of title is completely linked.

The Arrowhead Lake Association agreed that Plaintiff would serve as the Architectural Committee for Arrowhead Woods (Exhibit 17). The Arrowhead Lake Association "confirm(ed) the performance by (Plaintiff) of its functions as appointing power for Architectural Committees and in connection with the performance of the functions of such committees required under various Declaration of Restrictions for subdivisions located in Arrowhead Woods".

On December 15, 2010, Plaintiff recorded a "Certification of Amendment of Declaration of Restrictions for Tract 7891" (Exhibit 2). The signatories were officers of Plaintiff who had been appointed in writing by the record owners of the lots in Tract 7074 having an aggregate area equivalent to 55% of the total area of said tract to execute and record the Certification. The Certification recited that 55% of the record owners had executed a written instrument appointing the signatories to execute and record a document on their behalf to extend the term of the Declaration of Restrictions. It provided and pursuant to Article XIII that Article III(h) was deleted and replaced, with identical language except that the power of the Architectural Committee was extended to December 31, 2025, and new directors of the Architectural Committee could be chosen by the Architectural Committee. Article XI was also deleted and replaced with identical language except to extend the Declaration of Restrictions to December 31, 2025 and provided a majority of the

owners of record of the lots could extend the term of the covenants and conditions, as opposed to record owners with an equivalent of 55% of the total area of the Tract. The Certificate was signed by the President, Vice President and Secretary of Plaintiff, whose signatures were notarized.

2. The Corporation Quitclaim Deed prohibits Defendants from cutting down trees without Plaintiff's permission.

In addition to the tree cutting restrictions in the Declaration of Restrictions, Defendants' property is subject to the tree cutting restrictions in a Corporation Quitclaim Deed (Exhibit (8). The Corporation Quitclaim Deed requires owners of property described in the Deed to obtain permission from Plaintiff before cutting any tree. It states the owners of real property in Arrowhead Woods "will not cut down, remove or alter any living tree unless first approved by an Architectural Committee appointed by the Grantor herein, its successors or assigns." The Declaration of Bradley L. Brier (Exhibit "77") establishes that Defendants' property is included in the property described in the Corporation Quitclaim Deed. Plaintiff is the successor to the Architectural Committee designated in the Corporation Quitclaim Deed by two Corporation Quitclaim Deeds (Exhibits 4 and 5). In 1986, the Arrowhead Mutual Service Company, the grantor in the Corporation Quitclaim Deed recorded in 1965, granted the "rights of forfeiture, enforcement . . . upon breach of covenants, conditions and restrictions imposed by the grantor" in the property known as Arrowhead Woods to Arrowhead Lake Association. In 1992, the Arrowhead Lake Association granted the "rights of forfeiture, enforcement . . . upon breach of covenants, conditions and restrictions imposed by the grantor" in the property known as Arrowhead Woods to Plaintiff (Exhibit "10").

3. Arrowhead Woods has prospered for 95 years under Architectural Committee's standards for development and property maintenance.

Plaintiff is a non-profit public benefit California corporation, incorporated in 1988. (Exhibit "13"). It has no members (Exhibit "14") Amended Articles of Incorporation, page 2, Article IV, section 5). Corporations Code section 7310 that a non profit corporation may provide in its Articles or Bylaws that it may admit members or have no members. If there is no such provision, the corporation has no members. A corporation which has no members includes a corporation in which the directors are the only members. Corporations Code §7310(c).

Plaintiff administers the Declaration of Restrictions for Arrowhead Woods. Arrowhead Woods consists of approximately 92 tracts of land surrounding Lake Arrowhead. The properties in Arrowhead Woods are more valuable, better designed, better maintained, better looking and subject to more stringent development standards than other properties in the San Bernardino mountains. All new construction for properties in Arrowhead Woods has been approved by Plaintiff or its predecessors. All remodels and changes of paint color must be approved by Plaintiff. Set backs for fences and other structures are enforced by Plaintiff. If property owners don't maintain their properties by letting weeds grow, which is unsightly and a fire hazard, Plaintiff takes action to bring the property into compliance. If property owners let trash or clutter accumulate in front yards, driveways or side yards, Plaintiff will take action to bring their properties into compliance.

Arrowhead Woods was first developed in the 1920s. From the 1920s until the 1960s, about 63 tracts were developed. In the 1960s, about another twenty five tracts, including Tract 7891 containing Defendants' property, were developed.

With few exceptions, Plaintiff acts as the Architectural Committee for all of the tracts in Arrowhead Woods. Defendants' tract was developed in the 1960s. Tracts developed before the 1960s have similar CC&Rs, but don't have an expiration date.

There are approximately 9000 lots in Arrowhead Woods. About 7700 of those lots have been developed with single family residences. The lots were developed as single family residences after obtaining approval by Plaintiff or Plaintiff's predecessors. The owners of 9000 lots purchased their properties in reliance of the high standard of construction and standards for weed and trash abatement which have been enforced by Plaintiff and Plaintiff's predecessors for almost 100 years.

These building standards have remained consistent for almost 100 years. The standards include steep pitched roofs, an alpine or "mountain" design, and earth colored paint tones. Combined with compliance for setbacks, weed and trash enforcement, prohibition of high solid fences in order to maintain an open feel of the area, and standards for high quality of materials and design, the building standards have resulted in an exceptionally desirable mountain resort community for almost 100 years. The Declaration of Restrictions has resulted in a combination of natural alpine beauty, high building standards and well maintained properties is unique in Southern

California. No other residential area in Southern California has the combination of natural forest, high quality building standards and high maintenance standards.

Arrowhead Woods is a highly desirable residential area with higher property values and higher quality properties. For many decades the Arrowhead Woods area has been well known throughout Southern California as a highly desirable exclusive residential area. Multiple generations of families have enjoyed the forest, the high quality of the area, the good maintenance, the nice houses and high values. Plaintiff's administration of the Declaration of Restrictions has greatly contributed to this status of Arrowhead Woods. Defendants want to destroy this because they violated the rules.

County enforcement of codes for weeds and clutter control in the mountains is lax. Without Plaintiff enforcing maintenance standards, the area would soon deteriorate. County building standards are not as high as the standards imposed by Plaintiff.

4. Trees are vitally important to the owners in Arrowhead Woods

In addition to property maintenance and building standards, an equally important function of Plaintiff is to preserve the forest in Arrowhead Woods. An important distinguishing feature of Arrowhead Woods from other residential areas in the San Bernardino mountains is the abundant trees. Other residential areas have no restrictions on cutting trees. These other areas can have almost a suburban feel and appearance. In some areas, almost all trees have been cut down. In Arrowhead Woods, because of the restrictions on cutting trees enforced by Plaintiff, there are many more trees which provide a much more natural forest type atmosphere.

The trees screen houses from one another and provide privacy. The trees provide homes for abundant wild life in Arrowhead Woods; hundreds of species of birds, squirrels, chipmunks and raccoons. The wildlife includes bald eagles, hawks, Blue Jays, robins, sparrows, vultures, gray squirrels, endangered migratory birds and rare flying squirrels. The trees screen houses from roads and neighboring properties so that if one is driving along a road in Arrowhead Woods, the houses are much less noticeable. Pines, Cedars, Oaks, Redwoods, flowering Dogwoods, Firs and Alders are among the many graceful strong trees that live in Arrowhead Woods. Many of these trees have lived more than 200 hundred years. The trees are a pleasure to view, provide shade and are enjoyed

by the entire community. These thousands of trees provide habitat for bears, coyotes, bobcats and mountain lions. About a million trees in the San Bernardino mountains were killed recently by the bark beetle. It's vital to protect the trees that remain in Arrowhead Woods. Even the name given by the developer, Arrowhead Woods, shows the importance of the trees.

Trees have been devastated in the San Bernardino mountains in the last 15 years. Beginning in 2001, the bark beetle ravaged millions of pines, large scale fires in 2003, 2007, and again in 2015 have destroyed hundreds of thousands of acres of trees. Drought and insects have attacked pines and other species. Plaintiff's efforts to preserve the forest has created a safe space for trees in Arrowhead Woods. Because trees are protected and benefit from outdoor irrigation in Arrowhead Woods, the forest in Arrowhead Woods has more trees than many areas in the San Bernardino National Forest. Plaintiff requests that the court take judicial notice of Exhibits 93 and 94. Evidence Code section 452(g)(h).

5. Plaintiff's efforts to preserve Arrowhead Woods by extending the Declaration of Restrictions

In 2005, as allowed by Article XI of the Declaration of Restrictions which provides that ***at any time*** prior to December 31, 2010, the document to extend can be signed, Plaintiff began to gather signed CC&R Renewal Ballots from property owners to extend the Declaration of Restrictions for Tract 7074, and all other tracts for which the restrictions were going to expire. Plaintiff began gathering in approximately 2005.

By December 2010, Plaintiff had obtained at least 55% of signatures for each of the tracts.

Plaintiff as the successor in interest consented in writing by executing and recording the Certificate of Amendment (Exhibit 2).

The signatures were obtained by writing letters to property owners, word of mouth, efforts by real estate agents, efforts by Plaintiff's personnel, and articles in local media. It was a challenge to obtain the signatures. As much as 60% of the homes in Arrowhead Woods are second homes. Therefore, the effectiveness of knocking on doors and local media is limited. Almost 10% of the properties are vacant land, and those owners are typically uninterested in activities in Arrowhead Woods. In 2007 and 2008, the recession began. Lake Arrowhead was hit particularly hard. Many

second home owners gave up their properties. Some of properties were in foreclosure, were bank owned, or the owners imply had lost interest. Signatures for such properties were difficult, if not almost impossible, to obtain. Most signatures were obtained by mail. It was not practical to ask property owners to have their signatures notarized. It is difficult enough to ask a property owner to sign a ballot, much less go to a notary, pay a notary, and then return a CC&R Renewal Ballot.

The record of property owners of Tract 7074, by over a 60% majority, agreed to extend the Declaration of Restrictions by signing a "CC&R Renewal Ballot" (Exhibit 3). The "CC&R Renewal Ballot" stated as follows: "The owners of record of Lot __, in Tract 7891, irrevocably appoints Arrowhead Woods Architectural Committee President, Vice President, Secretary or their successors to exercise their power to extend a term in said Declaration of Restrictions to December 31, 2025 as set forth in Article XI of said Declaration of Restrictions, and extend the powers of the Architectural Committee as set forth in Article III of said Declaration of Restrictions. Said appointees have the power to execute and record any document on my/or behalf to extend the term of said Declaration of Restrictions and the powers of the Architectural Committee as set forth in said Declaration of Restrictions. This appointment is coupled with an interest granted to the appointees for their work in securing the necessary appointments to extend the term of said Declaration of Restrictions and the powers of the Architectural Committee as set forth in said Declaration or Restrictions. Any successor to a person appointed above shall be chosen by majority of the then current members of the Arrowhead Woods Architectural Committee."

Once the extensions for all the tracts were recorded, announcements were made in local media. Additionally, since that time, Plaintiff has posted signs in Lake Arrowhead which notified property owners that permission from Plaintiff must be obtained before any construction or cutting trees.

Plaintiff has posted numerous signs throughout Arrowhead Woods which notify property owners, such as Defendants, that permits are required from Plaintiff for tree removal and other construction. Defendants pass by these signs to pick up their mail and shop for groceries.

Defendants do not deny that under the Declaration of Restrictions and the Corporation Quitclaim Deed, they are required to obtain permission for cutting any trees on their property.

Defendants do not deny that their property is located in Tract 7074. Defendants do not deny that they did not attempt to obtain permission for cutting a tree from Plaintiff before they cut the tree. Defendants do not deny that 62% of their neighbors in their tract signed CC&R Renewal Ballots to extend the Declaration of Restrictions.

Since the Declaration of Restrictions was renewed, 900 to 1680 homes have been sold in Arrowhead Woods. All of the buyers relied on the Plaintiff's enforcement of the Declaration of Restrictions their decision to purchase. There are approximately 7700 homes in Arrowhead Woods. Up to 20% of them have been sold since 2011 in reliance on the extension of the Declaration of Restrictions.

ISSUES

1. Has the Declaration of Restrictions been extended?

2. Has the time in which Defendants have to challenge the Declaration of Restrictions passed and their challenge barred by the Statute of Limitations in *Code of Civil Procedure* Section 343?

3. Is Defendants' challenge barred by Laches?

4. Are the CC&R Renewal Ballots valid?

5. Is Plaintiff the successor Architectural Committee to the Architectural Committee established in the Declaration of Restrictions?

6. Is Defendants' property subject to the Corporation Quitclaim Deed?

7. Is Plaintiff the successor Architectural Committee to the Architectural Committee designated in the Corporation Quitclaim Deed?

I.

THE TIME IN WHICH DEFENDANT HAS TO CHALLENGE THE DECLARATION OF RESTRICTIONS HAS EXPIRED UNDER THE STATUTE OF LIMITATIONS

The time limit to challenge an extension of CC&Rs in found in *Code of Civil Procedure* section 343; which provides: "An action for relief not herein before provided for must be

commenced within four years after the cause of action shall have accrued." This statute was applied in two recent cases discussed below.

In *Costa Serena Owners Coalition v. Costa Serena Architectural Committee* (2009) 175 Cal.App.4th 1175, the Appellate Court decided the same issue as presented in this action. *Costa* is a Fourth District case.

Costa Serena was developed in the 1970s. The CC&Rs were set to expire at the end of 2006. Before the CC&Rs expired, they were extended in the same fashion as the Declaration of Restrictions was extended by Plaintiff. *Costa* at 1178.

In *Costa*, the Plaintiff ("Coalition") challenged the extension of the CC&Rs by filing an action. On Motion for Summary Judgment, the trial court entered judgment in favor of the Coalition, finding that the extension was void because it was not enacted in a manner that complied with the CC&Rs. *Costa* at 1179. The Architectural Committee ("Defendant") appealed. The Architectural Committee contended the judgment should be reversed because (1) the Coalition's claims were barred by the Statute of Limitations; (2) the Coalition's claims were barred by Laches; and (3) the trial court erred in interpreting the CC&Rs to require that documents signed by the property owners of record must be recorded. The Appellate Court concluded that the trial court erred. The Appellate Court found that the Coalition's claims were barred by the Statute of Limitations. *Costa* at 1179-80.

In ruling that the trial court erred that the Architectural Committee did not comply with the CC&Rs, the Court stated at 1180: "We conclude that the consent forms are sufficient to demonstrate that a majority of property owners agreed to extend (the CC&Rs) and that the trial court improperly sustained the Coalition's objections to the consent forms." The judgment was reversed and the trial court directed to enter judgment for the Architectural Committee that the CC&Rs had been properly extended.

In *Costa*, the CC&Rs provided that to extend the CC&Rs, the owners must "have executed and recorded . . . in the manner required for a conveyance real property, a writing in which they agree . . ." to extend the CC&Rs.(*Costa* at 1181)

In *Costa*, the amendments to the CC&Rs were accomplished by the Architectural Committee recording and certifying that the amendments had been approved by the required number of owners. The documents signed by the owners were not recorded. This procedure was used several times. *Costa* at 1181-83.

The language in the *Costa* CC&Rs is very similar to the language in the Declaration of Restrictions. The method of obtaining the consents in *Costa* is essentially the same method used by Plaintiff.

The language in the CC&Rs in *Costa* provided that the owners could extend the CC&Rs if a "majority of said lots have executed and recorded at any time within six months prior to December 31, 2006, in the manner required for a conveyance of real property, a writing in which they agree that said conditions and restrictions shall continue . . . ".

In the Declaration of Restrictions for Tract 7074 Article III(h), the powers of the Architectural Committee (Plaintiff) can be extended by "a written instrument . . . executed by the record owners of a majority of the lots in said Tract and duly recorded . . .".

At any time the Declaration of Restrictions can be extended by the record owners of lots of 55% of the total area of the tract "executing and acknowledging an instrument in writing to that effect which shall be duly recorded" (Article XI(b)).

The Declaration of Restrictions may be amended by a vote of 55% of the record owners of the total area of the tract "by an instrument in writing signed by said owners and acknowledged by them so as to entitle it to be." (Article XIII.).

All that is required under Articles XIII, XI(b) and III(h) is a recorded document which satisfies the test in *Costa*; verification that a majority of the property owners agreed in writing to extend the Declaration of Restrictions. The Certification of Amendment to the Declaration of Restrictions (Exhibit "2") satisfies the test in *Costa.* The Certificate constitutes the written consent of the successor in interest of the Declarant to the extension.

The Architectural Committee recorded a Certification of Amendment to the Declaration of Restrictions executed by officers of the Architectural Committee that verified that the Declaration

of Restrictions had been extended by written agreement of 55% of the property owners of Tract 7891. This satisfies the requirement in *Costa*. (*Costa* at 1181-83).

In *Costa*, the trial court ruled in favor of the Coalition, concluding that the CC&Rs "required that the property owner's signatures be attached to any amendment document and that their signatures also be recorded with the amendment". (Costa at 1185.)

At 1190, the Appellate Court reversed and stated: "We conclude the trial court erred in finding that the 1986, 1987 and 1989 Amendments are void *ad inito*." The Court said that the Architectural Committee had "successfully extended the (CC&Rs)".

At 1193, the Appellate Court stated that the Coalition's challenge to the Amendments was that they were enacted in a manner "that failed to conform to the requirements of the provisions that were outlined "in the (CC&Rs). That is the same argument that Defendants are making.

At 1195, the Court held that the Statute of Limitations that applied to the Coalition's claim was *Code of Civil Procedure* Section 343; a four year statute.

At 1195-96, the Court stated: "As a general rule, a statute of limitations accrues when the act occurs which gives rise to the claim, that is, when the plaintiff sustains actual and appreciable harm. Any manifest and palpable injury will commence the statutory period". The Court found that the Coalition homeowners "sustained a manifest and palpable injury at the time each of the Amendments was recorded and thereby made effective."

In this action, "any injury" sustained by Defendant would have been on December 15, 2010 when the Certification was recorded. However, Defendant did not even own either of her properties on that date. She didn't acquire her properties until 2-1/2 years later. Therefore, she could not have suffered any injury. In any event, the Defendant has waited more than four years before challenging the extension.

At 1196, the Court noted that the Architectural Committee "conducted business for years under the (CC&Rs) since they were amended." Likewise, Plaintiff has administered the extended Declaration of Restrictions for over four years. Hundreds of properties have been bought in reliance upon the extension of the Declaration of Restrictions. If the Court rules against Plaintiff, the consequences could be that all restrictions for Arrowhead Woods may not be enforceable

Hundreds of property owners who bought in reliance on the extension would be deprived of the value of their property. The decline in value of properties in Arrowhead Woods would be tens of millions, if not hundreds of millions of dollars.

At 1196, the Court stated: "The Coalition is deemed to have had notice of the Amendments at least from the time they were recorded" and said "recording of the CC&R's provides constructive notice of restrictions on property". The Coalition did not allege that the Amendments were procured by fraud. Therefore, "There is no basis for tolling the statute of limitations".

At 1197, the Court concluded that the Coalition claims were "time barred". The Court stated that "The Architectural Committee successfully effected an extension of (the CC&Rs) executing and recording a writing evidencing the majority of lot owners agreeing to the extension" and "the Architectural Committee needed assent of the majority of owners . . . to extend (the CC&Rs).

"The Architectural Committee presented evidence sufficient to establish that a majority of owners had agreed to extend (the CC&Rs). The Appellate Court agreed that the Architectural Committee should prevail "because it presented the Court with evidence that a majority of the owners of the lots . . . consented to extend (the CC&Rs)". *Costa* at 1198.

At *Costa* 1199, the Court stated that the (CC&Rs) must be interpreted "in a way that is both reasonable and carries out the intended purpose of the (deed restrictions)". Under that standard, the Court held that it was not necessary for each document signed by the owner to be recorded. The CC&Rs in *Costa* have basically the same language used in the Declaration of Restrictions. Therefore, under the rules established in *Costa,* Plaintiff did not have to attach each CC&R Renewal Ballot to the recorded Certification.

At 1199, the *Costa* court said that the requirement could be met by a "single writing that in some way evidences that a majority of the owners have agreed to the proposed extension". The Court further said "This requirement may be met by a document that certifies that a majority of the owners of lots of (the community) have agreed to extend the (CC&Rs). Such an instrument would constitute sufficient evidence that the requirement of a majority of owners have agreed to the extension has been met. As long as that instrument is executed and recorded in the same manner in

requirements of the CC&Rs have been met". The Court further stated "a single writing that sufficiently evidences the fact that a majority of owners have agreed to the extension is the document that (the CC&Rs) requires be executed and recorded in the same manner in which the conveyance of real property would have to be executed and recorded, in order for the extension to be effective. (*Costa* at 1200.)

Like in this action, the Architectural Committee in *Costa* recorded a document signed by the Architectural Committee with each member's signature notarized. The Court said at 1201 "The Extension Document is clearly a writing that evidences that a majority of the owners in *Costa Serena* have agreed to the extension. The document was executed and recorded in the manner required for conveyance of real property since it included all the necessary formalities: it included a sufficient description of the property affected by the extension, it identified the restrictions on the properties that were being extended, was signed and notarized, and recorded at the county recorder's office. The effect of the execution and recordation of the Extension Document is that any person having title to or interested in acquiring title to an affected property has, at a minimum, constructive notice that the residences and in *Costa Serena* continue to be governed by (the CC&Rs)".

The CC&Rs in *Costa* provided that the owners could extend the CC&Rs if a "majority of said lots have executed and recorded at any time within six months prior to December 31, 2006, in the manner required for a conveyance of real property, a writing in which they agree that said conditions and restrictions shall continue . . . ".

The Declaration of Restrictions for Tract 7891 provides that "***At any time*** the Declaration of Restrictions can be extended by the record owners . . . executing and acknowledging an instrument in writing to that effect which shall be duly recorded" (Article XI(b)).

The substance of the provisions in the *Costa* CC&R's and the Declaration of Restrictions for Tract 7074 is the same; a majority of the lot owners executing a document to extend the restrictions, and subsequently another document is recorded which provides that the majority of the lot owners have agreed to extend the restrictions. The procedure followed by the architectural committees in

both cases is the same; recording a document evidencing that a majority of the lot owners executing a document to extend the restrictions.

At 1201, the Court noted: "It can be assumed that a homeowner who signed a consent form wished to extend (the CC&Rs)". The Court further stated: "we conclude it is not necessary that each homeowner have executed and recorded a consent document that would be sufficient to convey property in order to comply with (the CC&Rs)". "No additional evidence of the owner's signatures, consent forms or any other documents were required."

As a matter of law as established in *Costa*, the Certification signed and recorded by Plaintiff is sufficient to extend the Declaration of Restrictions for Tract 7891.

In *Schuman v. Ignatian* (2010) 191 Cal.App.4th 255, 256-57, the plaintiffs filed an action against the defendant, seeking a judgment forcing the defendant to comply with the CC&Rs. Just as in this action, the defendant waited until the last minute before challenging the validity of the recorded document extending the CC&Rs. At 259, the Court noted that the defendant had filed an answer with affirmative defenses, none of which challenged the validity of the CC&Rs or the amendment.

In this action, Defendant has not yet pled a challenge the extension of the Declaration of Restrictions, although apparently she now seeks to do so. At 260, the Court stated, like in this action, the defendants challenged the CC&Rs because the amendment "was not signed by all of the lot owners". Like in *Costa*, the trial court ruled that the extension of the CC&Rs was not effective "because it was not signed by all the lot owners". *Schuman* at 261. *Schuman* is a Second District case.

In *Schuman* at 257, the owners seeking to extend the CC&Rs only had to obtain signatures from 35 of the 68 property owners. By contrast, Plaintiff had to obtain thousands of signatures to extend the Declaration of Restrictions for the Arrowhead Woods tracts. If signed unrecorded consents were adequate when only 35 signatures were needed, then signed unrecorded CC&R Renewal Ballots are adequate when thousands of signatures were needed.

At 263, the Court said, "Challenges to recorded amendments to CC&Rs must be brought within four years". The Court found that the decision in *Costa* was controlling.

At 266, the Court stated that the defendants' "defensive challenge sought affirmative relief, and therefore the Statute of Limitations applies". At 266, the Court said that "in many cases Statute of Limitations do not apply to defenses . . . but when an asserted defense sets up an affirmative cause of action the adverse party may show that the attempted defense is barred by the statute of limitations". For example, in an action to quiet title, the defendants answer asking the Court to require the plaintiff to accept a defendant's tender of the balance due on a contract sought affirmative relief barred by the statute of limitations. In a quiet title action, a defendant's answer asserting ownership of a property was at issue, was actually a cause of action barred by the applicable statute of limitations.

In seeking a ruling to overturn Plaintiff's extension of the Declaration of Restrictions, Defendant is seeking affirmative relief from the Court.

At 267, the Court found that because the defendants were seeking relief declaring the extension to be invalid, that the "defense constituted an affirmative cause of action to which the statute of limitations applies." The Court noted that in the time in which the statute had run "property owners have relied in purchasing, selling or retaining their property". The Court stated "statues of repose are in fact favored in the law . . . the theory is that even one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them". The Court held that "Because (the defendants') challenge to the validity of the Amendment was asserted more than four years after the Amendment was recorded, it is barred by the Statute of Limitations."

The two controlling cases are *Costa* and *Schuman*. As a matter of law, any challenge to the extension at the Declaration of Restrictions is barred by the Statute of Limitations.

II.

DEFENDANT'S CHALLENGE TO THE EXTENSION OF THE DECLARATION OF RESTRICTIONS IS BARRED BY LACHES

As the Court found in *Fountain Valley Hospital v. Bonta* (1990) 75 Cal.App.4th 316, 323, 89 Cal.Rptr. 2d, 139, 144, unreasonable delay complied with prejudice constitutes laches.

Defendant's four year delay to bring their challenging to is unreasonable. Up to 1680 home buyers in the past 4 ½ bought in reliance on the Declaration of Restrictions being extended. Plaintiff and many hundreds of property owners will suffer severe prejudice caused by Defendants' delay. The delay was unreasonable because they waited after they violated the Declaration of Restrictions until bringing their challenges. If Defendants believed the extension was not valid, they should have filed an action to invalidate the extension immediately.

In *Brown v. State Personnel Board* (1985), 166 Cal.Capp.3d 1151, 1161, 213 Cal.Rptr. 53, 59-60, the court discussed "unreasonable delay". The court stated "Statutes of limitation and the doctrine of laches share a common policy. Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared". That describes exactly what happened in this action. The Defendants decided to wait for four years while hundreds of properties worth millions of dollars were bought. Only after they were sued for violating the Declaration of Restrictions and after millions of dollars of properties had changed hands, did they challenge the extension.

The court said that the "statute of limitations effectuates these policies by a fixed rule". The court said "laches, on the other hand, requires proof of delay which results in prejudice or change in position." Laches is established because of the unreasonable delay in waiting four years to challenge the extension with the resulting prejudice to thousands of property owners who have relied on the extension of Declaration of Restrictions.

At 1196, the Court in *Costa* noted that the Architectural Committee "conducted business for years under the (CC&Rs)" since they were amended. Likewise, Plaintiff has administered the extended Declaration of Restrictions for over four years. Hundreds of properties have been bought in reliance upon the extension of the Declaration of Restrictions. If the Court rules against Plaintiff, the consequences could be that all restrictions for Arrowhead Woods may not be enforceable Hundreds of property owners who bought in reliance on the extension would be deprived of the value of their property. The decline in value of properties in Arrowhead Woods would be tens of millions, if not hundreds of millions of dollars. Because Defendant waited over four years to

challenge the Declaration of Restrictions for over four years, hundreds of property owners will suffer extreme prejudice because: (1) their property will be devalued, (2) their enjoyment of their own property will be diminished because building and (3) property maintenance standards will not be enforced, and the character of Arrowhead Woods will be permanently degraded. Defendant should not be rewarded for violating the Declaration of Restrictions and waiting for more than four years just to save a few thousand dollars, while costing the property owners of Arrowhead Woods, tens or hundreds of millions of dollars.

In *Schuman* at 267, the Court found that because the defendants were seeking relief declaring the extension to be invalid, that the "defense constituted an affirmative cause of action to which the statute of limitations applies." The Court noted that in the time in which the statute had run "property owners have relied in purchasing, selling or retaining their property". Like in *Schuman,* property owners (hundreds of them) have bought properties in reliance on the Declaration of Restrictions.

Since the Declaration of Restrictions was renewed, 900 to 1680 homes have been sold in Arrowhead Woods. All of the buyers relied on the Plaintiff's enforcement of the Declaration of Restrictions their decision to purchase. There are approximately 7700 homes in Arrowhead Woods. Up to 20% of them have been sold since 2011 in reliance on the extension of the Declaration of Restrictions. Because Defendant waited over four years to challenge the Declaration of Restrictions for over four years, up to 1680 new owners will suffer extreme prejudice because: (1) their property will be devalued, (2) their enjoyment of their own property will be diminished because building and (3) property maintenance standards will not be enforced, and the character of Arrowhead Woods will be permanently degraded. The delay by Defendant has been unreasonable and up to 1680 home buyers in Arrowhead Woods would suffer prejudice by Defendant's delay because the buyers relied on the extension of the Declaration of Restrictions in their decision to purchase and their property values and enjoyment of their property will be devastated in the Defendant is rewarded for her delay. The Defendant should have immediately challenged the extension instead of waiting until they she was caught breaking the rules.

III.

THE CC&R RENEWAL BALLOTS ARE VALID

Defendant contends that some of the CC&R Renewal Ballots are not valid because the property owners who signed have since sold their properties.

At Article XI, the Declaration of Restrictions provides the way for them to be extended from the initial term of 2010 to 2025. It states: "***At any time*** prior to December 31, 2010, the owners of record of lots or building sites in said Tract, subject to this declaration, having an aggregate area equivalent to not less than 55% of the total area of all of said property, may extend the term during which said covenants, conditions and restrictions shall bind or in effect said Tract to December 31, 2025, by executing and acknowledging an instrument in writing to that effect which shall be duly recorded with the County Recorder at San Bernardino, California." (Emphasis added)

Defendant may assert that the statutes governing a non-profit membership corporation apply to the vote for the extension. The rules for a membership corporation (even if Plaintiff was a membership corporation – which it is not) apply only to the governance of such a corporation. The provisions for extending the Declaration of Restrictions are independent and are not governed by the rules for a membership corporation (which Plaintiff is not). Such rules only apply to the internal governance of such a corporation. If Plaintiff was a membership corporation and Defendants were members, their remedy for an alleged violation of the Corporations Code would be writ of mandate. Defendants have no standing, as third parties, to contest the internal affairs of a non-membership corporation in which they have no membership.

In *Costa Serena Owners Coalition v. Costa Serena Architectural Committee* (2009) 175 Cal.App.4th 1175, the Court held that covenants, conditions and restrictions were liberally construed in favor of promoting the policies set forth above. At 1199, the Court said: "It is our duty to interpret the deed restriction in a way that is both reasonable and carries out the intended purpose of the contract (citations omitted). The same rules that govern the interpretation of contracts apply to the interpretation of CC&R's. (Citation omitted) . . . The language of the CC&R's governs if it is

clear and explicit, and we interpret the words in their ordinary and popular sense unless a contrary intent is shown. The parties' intent is to be ascertained from the writing alone if possible."

As set forth above, the language of the CC&R's in *Costa* and the Declaration of Restrictions for tract 7891 have the same effect. The procedures to extend the CC&R's in *Costa* and the Declaration of Restrictions for tract 7891 were the same. The result is the same; the Declaration of Restrictions was extended.

Additionally, the property owners "irrevocably appoint(ed) Arrowhead Woods Architectural Committee President, Vice President, Secretary or their successors to exercise their power to extend a term in said Declaration of Restrictions to December 31, 2025 as set forth in Article XI of said Declaration of Restrictions, and extend the powers of the Architectural Committee as set forth in Article III of said Declaration of Restrictions. Said appointees have the power to execute and record any document on my/or behalf to extend the term of said Declaration of Restrictions and the powers of the Architectural Committee as set forth in said Declaration of Restrictions" See Exhibit 4. In the CC&R Renewal Ballot, the property owners "irrevocably appoint(ed) Plaintiff . . .to exercise their power to extend a term in said Declaration of Restrictions . . . Said appointees have the power to execute and record any document on my/or behalf to extend the term of said Declaration of Restrictions" Even if the Declaration of Restrictions was interpreted to require the property owners to execute and record their consent, the property owners irrevocably appointed Plaintiff to do so on their behalf by recording ***any document*** on their behalf. Through the appointment in the CC&R Renewal Ballot, the recording of each CC&R Renewal Ballot was accomplished by the recording of the Certification (Exhibit 2).

The Declaration of Restrictions must be interpreted in a fashion that "carries out the intended purpose of" deed restrictions. In *Nahrstedt v. Lakeside Village Condominium Association*

(1994) 8 Cal.4th 361, 368, the Supreme Court said that covenants, conditions and restrictions promote "a stable and predictable living environment". Allowing Plaintiff an adequate time to gather the documents extending the Declaration of Restrictions promotes "a stable and predictable living environment" that has existed in Arrowhead Woods for almost 100 years.

In *Dolan-King v. Rancho Santa Fe Association* (2000) 81 Cal.App.4th 965, 973-74, the court discussed "the rule of judicial deference to community association board decision making is set out by the California Supreme Court (in *Nahrstedt*)." The Association's authority was derived from CC&Rs, just like Plaintiff's authority in this action. At 975, the court stated: "the California Supreme Court has made it clear that restrictions on the use of property contained in covenants recorded with a County Recorder are presumed to be reasonable and will be enforced uniformly against all residents of the common interest development unless the restriction is arbitrary, imposes burdens on the land it effects, and substantially outweighs the restriction of benefits to the development's residents or violates a fundamental public policy."

The authority given to Plaintiff in the Declaration of Restrictions to gather the documents extending the Declaration of Restrictions ***at any time*** before December 31, 2010 is presumed to be reasonable. The Declaration of Restrictions provides that the documents to extend the Declaration of Restrictions can be signed ***at any time.*** No law allows Defendant to change Declaration of Restrictions to suit her needs or to write a rule meant for the internal governance of a membership corporation into the Declaration of Restrictions.

In *La Jolla Mesa Vista Improvement Association v. La Jolla Mesa Vista Homeowners Association* (1990) 220 Cal.App.3d 1187, the Court held that once a record owner signed a writing indicating his or her assent to extend CC&Rs, it could not be rescinded. In *La Jolla*, the required number of votes to extend CC&Rs was obtained. *La Jolla* at 1191. However, before recordation, some of the lot owners signed rescissions of their consent. The Court held that it found that

"homeowners who asserted in writing to the extension did not have the power to unilaterally revoke their consent". *La Jolla* at 1191. At 1194, the Court found that the signature to the consent was "sufficient to create a binding contract which could not be unilaterally rescinded". The consideration was a mutual promise and covenant that each person signing was binding together for the "object which is of common interest to all" and the consideration was the promise made by each signatory.

At 1196-97, the Court said that the benefits to be "derived from the renewal of the CC&Rs coupled with the benefits gained from a procedure which resolved the renewal issue with certainty and finality are sufficient consideration to support the irrevocability of the consents obtained by Homeowners." The Court said, "If a number of subscribers promise to contribute money on the faith of a common engagement, or with the accomplishment of an object of interest to all, which cannot be accomplished saved their common performance, it would seem that the mutual promises constitute reciprocal obligations". The Court stated where the written procedure does not "give an assenting member of a development the right to unilaterally withdraw his or her consent, such a right will not be implied". The Court said "Here, renewal of the CC&Rs could not be accomplished without the mutual consent of a majority of the homeowners; by analogy to the charitable contribution cases, a person who has given his assent to the extension is bound for reasonable period of time by the assents previously obtained and by assents which are later obtained."

In the paragraph of the CC&R Renewal Ballot, signed by 55% of the property owners, each signatory gave an appointment to the members of Plaintiff to sign the requisite document to extend the Declaration of Restrictions. The appointment was "coupled with an interest granted to the appointees for their work in securing the necessary appointments to extend the Declaration of Restrictions".

If consent cannot be withdrawn under *La Jolla*, then there is no reason why Defendant should be able to revoke the CC&R Renewal Ballots simply because the owners have sold their property. There is nothing in the Declaration of Restrictions, any statute, any case or in the CC&R Renewal Ballot that gives the Defendants the right to revoke someone else' ballot. Defendant's attorney signed the CC&R renewal ballot and even he hasn't revoked it. There's no reason to

believe that the new owners don't want the CC&Rs to be enforced. Instead, they bought their properties in reliance that the CC&R's would be enforced.

In *Estate of Wood* (1973) 32 Cal.App.3d 862, 865, the document at issue allowed a person to have a power of appointment "during her lifetime". At 869, the Court said, "An appointment may be revoked by the donee if, and only if . . . the donor does not manifest an intent that the employment should be revocable; and the donee manifests an intent to reserve to himself the power of verification". In the CC&R Renewal Ballot, the Plaintiff and property owners manifested an interest that the power would not be revocable by coupling it with an interest and stating that the Plaintiff would continue to seek consents. There was nothing in the CC&R ballot giving the property owner the right to revoke.

In *Lane Mortgage Co. v. Crenshaw* (1928) 93 Cal.App. 411, 428, the Court said that "a power is said to be coupled with an interest when the power forms part of a contract, and is a security for money or for the performance of any act which is deemed valuable, and is generally made irrevocable in terms or, if not so, is deemed irrevocable in law". The Court further stated that if a document was executed with "the coupled power, and additional interest is created and the proceeds thus arrived in no sense impairs the coupling in the power and the interest theretofore existing".

When each owner appointed Plaintiff's directors to execute the Certification, they coupled it with an interest as security for the performance of the act. The consideration is the additional efforts expended by Plaintiff to obtain the rest of the necessary CC&R Renewal Ballots' consents. If CC&R Renewal Ballots cannot be revoked under *La Jolla*, they are not invalid simply because the property has sold. Defendant has no evidence the current owners want the Declaration of Restrictions invalidated. Indeed, the current owners purchased in reliance that the Declaration of Restrictions was enforceable.

If Defendant opposed the extension of the Declaration of Restrictions, she didn't have to buy the North Bay property. She didn't buy it until after the extension was recorded. She could have filed an action to declare the extension void before buying or after her purchase. Defendant did nothing until she broke the rules and was caught. Defendant may contend that proxies of members

of a membership corporation are only valid for six months, but Plaintiff is not a membership corporation and has no members.

The Corporations Code provisions for voting in membership corporations do not supersede the Declaration of Restrictions, especially when the Defendant is not a member.

The jurisprudence of the State of California is not to upend long established policies. The Declaration of Restrictions in Arrowhead Woods has been enforced for almost 100 years. *Civil Code section 3541*states: "An interpretation which gives effect is preferred to one which makes void." The court should favor interpreting the Declaration of Restrictions to give it effect instead of an interpretation the makes it void.

IV.

THE BURDEN IS ON DEFENDANT TO CHALLENGE THE BALLOTS

In *Nahrstedt v. Lakeside Village Condominium Association* (1994) 8 Cal.4th 361, 368, the Supreme Court said that: "Courts enforce the covenants, conditions and restrictions contained in the recorded declaration of a common interest development unless unreasonable." The Court further stated as follows:

"Because a stable and predictable living environment is crucial to the success of condominiums and other common interest residential developments and because recorded use restrictions are a primary means of insuring the stability and predictability.

In *Clark v. Rancho* (1989) 216 Cal.App.3d 606, 620, the plaintiff, a homeowner, "had the burden of stating a prima facia case entitling him to relief. (Citation omitted.) To prevail, he had to convince a trier fact the wide latitude ordinarily accorded administrative and quasi-public administrative bodies in their decision making had been exceeded" (emphasis added). The Association's authority was derived from CC&Rs, just like Plaintiff's authority in this action. The Court further stated: "Where the subject agency or association is in the business of land use planning, the rules are well established: It is a settled rule of law that homeowners associations must exercise their authority to approve or disapprove an individual homeowner's construction or

improvement plans in conformity with the declaration of covenants and restrictions, and in good faith."

In *Dolan-King v. Rancho Santa Fe Association* (2000) 81 Cal.App.4th 965, 973-74, the court discussed "the rule of judicial deference to community association board decision making is set out by the California Supreme Court (in *Nahrstedt*)." The Association's authority was derived from CC&Rs, just like Plaintiff's authority in this action. At 975, the court stated: "the California Supreme Court has made it clear that restrictions on the use of property contained in covenants recorded with a County Recorder are presumed to be reasonable and will be enforced uniformly against all residents of the common interest development unless the restriction is arbitrary, imposes burdens on the land it effects, and substantially outweighs the restriction of benefits to the development's residents or violates a fundamental public policy." (Citation omitted.) "Such deference to the originating covenants, conditions and restrictions protects the general expectation of condominium owners that restrictions in place at the time they purchased their units will be enforceable."

Not only are such restrictions on use of property for the benefit of all property owners, favored, but the Defendant has the burden of proof because she is challenging the extension.

In *Costa* at 1193 and 1197, the Court described the party objecting to the extension of the CC&Rs as the challenger. In *Schuman* at 263, 266 and 267, the Court described the party objecting to the extension of the CC&Rs as the challenger. As the challenger to the extension of the Declaration of Restrictions, Defendant has the burden of proof to show that the extension is not valid.

The Certification of Amendment (Exhibit "2") states that the required number of signatures were obtained. The Defendant has the burden of proof to prove that they were not. *Evidence Code section 622.* That section provides that: The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest . . . " The Plaintiff and the Defendant are the successors of the Declarants in the Declaration of Restrictions and the Corporation Quitclaim Deed. The Declarants in each of those documents owned the real property which includes Defendants' property.

V.

DEFENDANT WAIVED ANY RIGHT TO CHALLENGE THE EXTENSION BECAUSE SHE BOUGHT HER PROPERTY AFTER THE EXTENSION WAS RECORDED

The extension was recorded in December 2010. Defendant bought the North Bay property in June 2013, 2-1/2 years after the extension. Defendant had constructive notice of the existence of the extension. *Costa at 1196."*

Civil Code §3513 provides in part: "Any one may waive the advantage of a law intended solely for his benefit."

In *Trujillo v. Los Angeles* (1969) 276 Cal.App.2d 333, 343, the court said: "To constitute a waiver it is essential that there be an existing right, benefit or advantage, a knowledge, actual or constructive, of its existence, and an actual intention to relinquish it, or conduct so inconsistent with the intent to enforce the right in question as to induce a reasonable belief that it has been relinquished. Waiver always rests upon intent."

Defendant waived her right to contest the extension. She had constructive knowledge of the extension. Her conduct, in purchasing the property with knowledge of the tree cutting restrictions and extension of the Plaintiff's right to enforce the restrictions, is so inconsistent with any intent to challenge the extension that it is reasonable to believe she relinquished her right to challenge the restrictions.

CONCLUSION

The two controlling cases are *Costa* and *Schuman*. Under both cases, a challenge to the CC&Rs must be brought within four years of the date the CC&Rs were recorded. Defendants have waited for more than four years after the CC&Rs were recorded to bring their challenge. Therefore, any challenge is barred by the statute of limitations.

Defendant's challenge is also barred by Laches. Laches is established by the unreasonable delay and prejudice to the owners who have purchased and retained their properties in the four years since the extension was recorded. Defendants never tried to persuade owners not to extend the

CC&R's before 2010. Up to 1680 homes have been bought in the four and one-half years that Defendant has delayed bringing her challenge is evidence of Laches.

Under *Costa*, the CC&R Renewal Ballots satisfy the standards set forth in *Costa* to provide adequate evidence that a requisite number of lot owners have agreed to extend the CC&Rs. The CC&R Renewal Ballots are not invalid simply because the property has been sold. *Schuman* confirms *Costa.* The language of the CC&R's in *Costa* and in the Declaration of Restrictions on the method to extend has the same effect. Plaintiff used the same procedure as the court approved in *Costa.* In the CC&R Renewal Ballot, each property owner appointed Plaintiff to execute and record "any document" on their behalf to extend the Declaration of Restrictions.

The extension had been recorded for 2-1/2 years when Defendant bought her property. By purchasing her property when the extensions had been recorded, she had constructive notice of the extensions. She acted inconsistently with any possible intent to challenge the extension. Thus, any attempt to challenge the extension is barred by waiver under Civil Code §3513.

The Corporation Quitclaim Deed explicitly prohibits the Defendant from cutting the trees. There is no expiration date in the Corporation Quitclaim Deed. Defendant's property is described in the Corporation Quitclaim Deed. Plaintiff is the successor to the Architectural Committee in the Corporation Quitclaim Deed and the Declaration of Restrictions.

Protection of the forest is vital to the property owners of Arrowhead Woods as evidenced by their 55% vote to retain the Declaration of Restrictions for all 25 tracts. Up to 1680 owners have purchased properties since 2010 in reliance on the extension of the Declaration of Restrictions. Plaintiff's protection of the forest benefits the community and the forest. Arrowhead Woods wants

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the trees and the trees need to be protected. The policy expressed in the Declaration of Restrictions is promoted by following the law which extends the Declaration of Restrictions.

Dated: January 17, 2017

LAW OFFICES OF JOHN G. WURM

By: _____
JOHN G. WURM, Attorney for Arrowhead Woods Architectural Committee, Inc., a California corporation

PROOF OF SERVICE

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action. My business address is Post Office Box 1875, Lake Arrowhead, California, 92352.

On January 17, 2017, I caused to be served the document(s) described as (Draft) **MOTION IN LIMINE** on the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

Robert G. Berke
7236 Owensmouth Avenue Suite D
Canoga Park, CA 91303

[ ] **BY FACSIMILE:** I transmitted by facsimile machine, to the fax number indicated below, a true and correct copy of the document described above to counsel indicated below. The foregoing document was transmitted by facsimile transmission and the transmission was reported as completed and without error.

[X] **BY U.S. MAIL:** I caused such envelope(s) to be deposited in the mail at Lake Arrowhead, California, with the postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party(ies) served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

[ ] **BY PERSONAL SERVICE**: I caused a true copy of said document(s) to be hand-delivered to the addressee(s) via a person who is not a party to this action or a California registered process server. If required, said registered process server's original proof of personal service will be filed with the court immediately upon its receipt.

[X] **BY ELECTRONIC TRANSMISSION**: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed.

[X] **STATE:** I declare under penalty of perjury that the foregoing is true and correct and this document was executed on January 17, 2017, at Lake Arrowhead, California.

[ ] **FEDERAL:** I declare that I am employed in the office of a member of the bar of the Court at whose direction the service was made.

Suzanne DeSalle