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**Deference to subsequently enacted CC&Rs:
Villa de las Palmas Homeowners v Terifaj, 2004
Roger Bernhardt**

Use restrictions in amended declarations recorded after homeowner's purchase of condominium unit are binding on that homeowner, and are entitled to same judicial deference as use restrictions recorded before purchase.

Villa de las Palmas Homeowners Ass'n v Terifaj (2004) 33 C4th 73, 14 CR3d 67

Individual condominium units in Villa De Las Palmas were conveyed to the original grantees in 1962 by recorded grant deeds that contained the development's CC&Rs. All the grantees agreed, which agreement was binding on their heirs and assigns, "to observe, perform and abide by any and all lawful by-laws, rules, regulations and conditions with respect to the use and occupancy . . . which from time to time [might] be adopted or prescribed by the board" of the homeowners association. The association adopted an unrecorded no-pet rule. In 1995, when Terifaj purchased her unit, she was aware of the no-pet rule. Terifaj brought her dog when she visited the unit, which was not her primary residence, and unsuccessfully tried to get the no-pet rule amended. After repeatedly warning Terifaj about her violation of the no-pet rule, the association sued her in 1999 for injunctive and declaratory relief and nuisance, and moved for a preliminary injunction to compel her to abide by the no-pet rule. In January 2000, the association adopted and recorded amended CC&Rs, which added a no-pet restriction. The association then amended its complaint against Terifaj. The trial court found the no-pet restriction in the amended CC&Rs to be an enforceable equitable servitude, granted a permanent injunction against any further violation of the no-pet restriction, found the violation to be a nuisance, and awarded the association \$15,000 in attorney fees. The court of appeal affirmed.

The California Supreme Court affirmed, holding that the no-pet restriction in the amended CC&Rs recorded after Terifaj's purchase of her unit was binding on her and was entitled to the same judicial deference as use restrictions that were recorded before her purchase. The court explained that under CC §1355(b), an amendment is effective after notice of the proposed amendment is given to the homeowners, the amendment is approved by a majority of the homeowners, and it is recorded. The express language and legislative history of §1355(b) compel the conclusion that when these requirements have been satisfied, the amendment is effective against all homeowners, irrespective of when the owner acquired title to the separate interest or whether the owner voted for the amendment. The court pointed out that it would make little sense to allow amendments and then limit their applicability to subsequent purchasers, because covenants and restrictions in common interest developments must be uniformly applied and burden or benefit all interests evenly.

The court also held that the no-pet restriction was enforceable as an equitable servitude, and the association was entitled to injunctive relief to compel Terifaj to comply with the no-pet restriction. The court rejected Terifaj's argument that CC&Rs are enforceable through injunctive relief only if they meet the common law requirements of equitable servitudes. The court

explained that, under CC §1354(a), CC&Rs are enforceable equitable servitudes unless unreasonable.

Finally, the court held that the standard of presumptive reasonableness applies to use restrictions adopted and recorded after a challenging homeowner has purchased his or her individual interest. Adopting that deferential standard, the court held that the recorded restriction prohibiting pets was not unreasonable as a matter of law.

THE EDITOR'S TAKE: At least as far as common interest developments are concerned, the battle between homeowner associations and their dissident residents seems to be over, with the HOAs' rulemaking power—except with regard to pets—vindicated by recent case-law (see below). Some minor skirmishes, however, still remain—such as the application of these caselaw principles to non-Davis-Stirling developments, and the effectiveness of post facto rules that are not written up as CC&R amendments—but it is unlikely that the resolution to these uncertainties will be dramatically different. Only a major overhaul of the Davis-Stirling Act, fueled by massive homeowner protests, could effect any significant change in this legal environment.

It is worth noting, however, that the battles in *Nahrstedt v Lakeside Village Condominium Ass'n* (1994) 8 C4th 361, 33 CR2d 63, *Lamden v La Jolla Shores Clubdominium Homeowners Ass'n* (1999) 21 C4th 249, 87 CR2d 237, and this case, *Villa de Las Palmas Homeowners Ass'n v Terifaj*, have been, in a sense, procedural: concerned mainly with the standard of judicial review and the right of homeowner associations to engage in rule-making and decision-making activities. Although a standard of deference to HOAs now prevails, and the attack burden is on disgruntled individual residents, the reasonableness requirement still does apply. Homeowner associations' decisions about pets may be considered reasonable—however they come out—but construction decisions (regarding, *e.g.*, building heights, roofs, siding) that are visibly inconsistent with previous development activities will in all likelihood get more scrutiny from the courts.

Reasonableness probably also includes some fairness component as well, and decisions that reflect a stacked deck or undue favoritism for one neighbor over another may also get closer looks. If too many abuses of this new-found power start to appear, judicial deference to homeowner association decisions may start shrinking. —*Roger Bernhardt*