**PRELIMINARY ANALYSIS**

**He v. Sea Ridge at Pacific Palisades Association**

Prepared By

SS

March 13, 2024

# SHORT SUMMARY OF CASE

Client owns the real property located at 622 Palisades Dr., Pacific Palisades, CA 90272 (the “Property”), situated within the Sea Ridge at Pacific Palisades Association’s (the “HOA”). When she purchased the Property, the realtor, who represented both the buyer and seller, informed her that she could erect a fence at the property. Based on the realtor’s representation, Client purchased the Property and construct a fence to protect her pet. In December 2023, the HOA issued a notice of noncompliance to Client, requesting her remove the fence which she did not obtain approval from the HOA’s Architectural Committee (the "ARC") before the construction. The notice further said that Client’s neighbors at 620 Palisades complained that the fence blocked their viewshed, which Client denied. Further, Client’s neighbors at 624 Palisades have a same fence as Client does. The HOA’s counsel served an ADR demand to Client on April 11, 2024.Client has the potential viable defenses:(i) Laches;(ii) Estoppel;(iii) Necessity;(iv) Unclean Hands;(v) Comparative Fault; and(vi) Selective Enforcement.

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# Parties / Significant Figures

|  |  |
| --- | --- |
| **Name of Party** | **Significance to Underlying Matter/Dispute** |
| Monica He (“Client”) | Client / HOA Member |
| Sea Ridge at Pacific Palisades Association | The HOA |

This table may be amended from time to time as new information/evidence comes in regarding new “parties” and/or witnesses.

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# Statement of Facts / Evidentiary Support

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client closed escrow on the property. | Client Timeline |
| N/A | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
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This table may be amended from time to time as new information/evidence comes in that require significant revisions to Client’s pre-litigation strategy.

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# Notable Provisions of the Governing Documents

|  |  |
| --- | --- |
| **Document**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  The HOA shall paint, maintain, repair and make necessary improvements to the common areas, as well as the exteriors of the garage, deck, and balcony elements of the Units, in good condition and repair. |
| Operating Rules  P. 20 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  [I]n the event of any water damage, mold infestation, or related damage arising from an owner’s negligence, or arising from any pipe leak or similar failure for which this owner has the maintenance responsibility, the owner shall be responsible for all repairs and resulting damage. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. |
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The table may or may not contain all the significant provisions of Client’s governing documents. Its sole purpose, in fact, is to help make the Firm’s analysis of Client’s pre-litigation case more convenient. The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the governing documents might strengthen (or weaken) Client’s pre-litigation case.

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# Additional Information/Clarification Needed From Client

At this time, the Firm does not need Client to provide any additional information or clarification. This section of the Preliminary Analysis may, however, be amended from time to time as new information/questions arise.

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# Civil Code § 5200 Document Demand

Although a Civil Code section 5200 demand went out, the HOA has not yet produced the documents. Once that occurs, the Firm will complete a thorough review of those documents to determine whether any that should’ve been produced are missing.

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# Additional Documents Needed From Client

The Firm needs to ask Client for the following documents:

— The Application submitted on January 8, 2024.

This section of the Preliminary Analysis may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

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Potential Affirmative Defenses

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Based upon the allegations made against Client thus far, and based upon the facts and evidence provided by Client and/or reflected in the documents the Firm has received and reviewed, the affirmative defenses discussed below appear to be applicable.

## Equitable Estoppel

— If a party acts or makes statements to intentionally or deliberately lead someone else to believe that a particular thing is true, and the second party acts upon that belief, the first party cannot contradict his or her prior statement or conduct. (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 782.)

## Unclean Hands

— If the plaintiff’s bad conduct or bad faith causes/is related to his or her own underlying harm, then that plaintiff is barred from obtaining equitable relief—i.e., a plaintiff cannot take advantage of his or her own wrong. (Civ. Code, § 3517; *Lynn v. Duckel* (1956) 46 Cal.2d 845, 850.)

## Laches

— A plaintiff’s claim is barred under the doctrine of laches if: (i) the plaintiff delayed in bringing his or her claim; (ii) the delay was unreasonable or inexcusable; and (iii) the defendant is prejudiced because of the delay. (*In re Marriage of Parker* (2017) 14 Cal.App.5th 681, 688.)

## Negligence (Comparative Fault)

— The plaintiff’s own negligence may be used to proportionally reduce the defendant’s fault—i.e., liability is directly proportional to the negligence of each party. (*Burch v. CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 357-58.)

## Waiver

— As an affirmative defense, waiver is a type of estoppel. It prevents a plaintiff from relying on a right (typically contractual) that the plaintiff would otherwise have no problem being able to enforce. Often, such a waiver exists because the plaintiff did or said something that made the defendant believe that the provision in question was no longer in effect, and defendant relied upon that action/statement. (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78.)

## Justification

— Because of the defendant’s legally protected interest, the defendant’s appropriate conduct was justified in protecting that interest. (*Richardson v. La Rancherita* (1979) 98 Cal.App.3d 73.) How this affirmative defense is applied, however, depends upon the nature of the claims alleged. For example, in response to an invasion of privacy claim, a defendant may be justified in violating a plaintiff’s privacy interest if the reason for the invasion outweighs the plaintiff’s privacy interest. (*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 573.) In an assault case, however, justification means that the defendant’s force was necessary to protect the defendant or others from wrongful injury. (Civ. Code, § 50.)

## Ratification

— The defendant is not liable for the plaintiff’s harm because the plaintiff ratified the defendant’s conduct after the conduct occurred. (Civ. Code, §§ 1588, 2307, 2310, 2311; *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 168; *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1111, [“[T]he ratification relates back to the time the tortious act occurred.”].)

## Consent

— The defendant is not liable for the plaintiff’s harm if the plaintiff consented to the conduct prior to the harm-producing conduct’s occurrence. (Civ. Code, §§ 3515, 3516; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 875; *Royer v. Steinberg* (1979) 90 Cal.App.3d 490, 498.)

## Necessity

— “Necessity” is an affirmative defense to nuisance claims that basically states that the defendant acted to prevent a threatened injury from something *not* connected to the plaintiff (e.g., force of nature, dangerous condition not caused by the plaintiff, etc.). (*Farmers Ins. Exchange v. State of California* (1985) 175 Cal.App.3d 494, 503.) This affirmative defense is different from the “lesser of two evils” defense, which is not applicable here.

## Private Necessity

— As a defense to a trespass cause of action, the affirmative defense of private necessity requires the defendant to allege (and prove) that the trespass was lawful because it was *necessary* to prevent serious harm to a person or property. (*People v. Ray* (1999) 21 Cal.4th 464.)

This section of the Preliminary Analysis may be amended from time to time if new information/evidence comes to light that supports additional affirmative defenses.

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# Strategic Considerations

## Applicability of Davis-Stirling Act

The Davis-Stirling Act applies to the facts of this dispute.

## Attorneys’ Fees and Costs

If this dispute is adjudicated, the prevailing party will be entitled to attorneys’ fees and costs under the Davis-Stirling Act.

## Jurisdiction and Venue

Since there is no binding arbitration provision in the CC&Rs, any litigation related to the dispute must take place in superior court of the county in which Client’s property is located.

## Standing

Based upon the information/evidence that Client has provided thus far, it appears that the opposing party has standing to pursue each of the claims alleged against Client.

## Secondary Conflicts Check

During the process of analyzing Client’s case and preparing this Preliminary Analysis, the Firm discovered the existence of a new potential or actual conflict of interest between the parties and/or significant figures. The Firm is currently reviewing its ethical obligations to determine if the conflict is waivable or not.

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# Final Thoughts / Issues / Concerns / Comments

None at this time.

This section of the Preliminary Analysis might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

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