**PRELIMINARY ANALYSIS**

**Pheasant Creek-El Toro HOA v. Special Needs Trust under the Lin Family Revocable Trust**

Prepared By

SE

December 5, 2024

# SHORT SUMMARY OF CASE

Client owns the real property located at 20702 El Toro Road, Unit 17, Lake Forest, CA (the "Property"), which is situated within the Pheasant Creek-El Toro Condominium Association, a community of 416 condominiums. Client sought legal representation to respond to and address allegations from the HOA and neighbor, Carolyn Stolp. Stolp, who lives next door to the Property alleges that Rosa Lin, who was diagnosed with bipolar disorder and schizophrenia and resides at the Property, has engaged in a pattern of nuisance behavior that has negatively affected Carolyn’s health, including secondhand smoking, loud noises, inflammatory remarks, etc.The HOA scheduled a hearing for February 24, 2025 at 6:15 p.m. to discuss the allegations and Client requested the Firm assist her with preparing for the hearing.As someone who suffers from a recognized disability, Rosa has some protections under California’s fair housing laws.

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# Parties / Significant Figures

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| **Name of Party** | **Significance to Underlying Matter/Dispute** |
| Special Needs Trust under the Lin Family Revocable Trust (“Client”) | Client / HOA Member |
| Pheasant Creek-El Toro Condominium Association ("HOA") | HOA |
| Carolyn Stolp ("Stolp") | Neighbor |
| Kevin Ward ("Ward") | HOA’s Current Property Manager |

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

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| **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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# Additional Documents Needed From Client

None at the moment.

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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.

## Lack of Damages

— Damages is a necessary element in most causes of action. Consequently, if the plaintiff hasn’t been damaged, it’s almost certain that the plaintiff cannot prevail.

## No Causation

— The defendant is not liable for the plaintiff’s damages if another’s conduct was the cause of the harm. (*Martinez v. Vintage Petroleum, Inc.* (1998) 68 Cal.App.4th 695, 700 [“intervening negligence cuts off liability (i.e., it becomes a superseding cause) if the intervening cause, and its results, are not reasonably foreseeable].)

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. In addition, the prevailing party in any such litigation will also be entitled to their attorneys’ fees and costs under Article XIV, Section 8 of the CC&Rs.

## 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

No new potential or actual conflict of interest between the parties and/or significant figures came to light during the Firm’s preparation of this Preliminary Analysis.

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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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