

## Eight Years of Struggle Over a Fence: The Saga of Dolan-King v. Santa Fe

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As common interest development professionals, we often receive guidance from the outcomes of battles that frankly give one pause. Many of the landmark cases in this area arise from the amazing persistence of a homeowner who will do battle, and spend years and hundreds of thousands of dollars over an issue that might not seem to merit the expense. At root of the dispute, whether in *Nahrstadt v. Lakeside HOA* (three cats), *Villa De Las Palmas v. Terifaj* (a dog), *Lamden v. La Jolla Shores* (termites) or *Cabrini Villas v. Haghverdian* (a wallmounted air conditioner), is the ongoing battle of community values against personal independence.

One of the latest battles, in San Diego County, spanned almost eight years and two separate trials and appeals. Unfortunately, for the homeowner and the association, literally hundreds of thousands of dollars were spent by each side. However, the two appeals provide guidance regarding the power of community associations to make and enforce architectural and other rules and regulations.

### The Facts

In 1996, Richard King and his wife, Patricia Dolan-King, bought a home in Rancho Santa Fe. The home was part of the Rancho Santa Fe Association, with recorded covenants dating to the 1920's. The home was placed solely in Patricia's name. The Association's covenants provided for an architectural committee, called the "Art Jury", to insure that construction will be "reasonably appropriate to its site and harmonize with its surroundings" and to maintain "a uniform and reasonably high standard of artistic result and attractiveness...."

The Kings wanted to build several turret-style room additions, as well as a fence wall. After the Art Jury denied the application, Ms. Dolan-King (the owner) appealed to the Board. When unsuccessful, she sued.

### Dolan-King I

Ms. Dolan-King argued at trial that the Art Jury was unreasonable in its denial of the application, and the trial court agreed. However, on appeal in 2000, the trial court was overruled. In the appellate opinion, later known commonly as "Dolan-King I", the court stated that use restrictions, including architectural restrictions, are evaluated with reference to the association as a whole, and not on a case-by-case basis. Therefore, the test is not whether the rule is reasonable as applied to a given home, but whether the rule is reasonable with reference to the entire association.

The Kings also argued the association's covenant granted subjective evaluation to the Art Jury, and thus was invalid. The court disagreed finding the broad and subjective discretion granted to the Art Jury was reasonable.

The court evaluated the architectural Guidelines differently, since they were not recorded. The court noted that unrecorded restrictions may still be equitable servitudes on the land, provided the owner has notice. However, the court's liberal attitude toward recorded covenants would not apply to unrecorded covenants (such as rules and regulations).

Therefore, rules do not carry with them the presumption of reasonableness. The court ruled for the association, concluding that since "the Art Jury and Board acted within the authority [of the governing documents],

with reasonable investigation, in the best interests of the community and not in an arbitrary manner, we will respect and uphold their decisions."

### **Dolan-King II**

While the appeal of Dolan-King I was pending, the Kings proceeded to build the 800 foot long wrought iron fence they wanted - without association approval. Per the covenants, "minor construction" did not require association approval, and Dolan-King apparently decided (contrary to the architectural rules) that the fence was "minor." The association requested Dolan-King to apply for approval or remove the fence. Dolan-King did neither, and the second lawsuit was filed. In Dolan-King II, she again argued the appellate court should examine her situation with reference to the rule, not whether the rule was reasonable with respect to the whole association. As in Dolan-King I, this argument was rejected, reiterating that rules will be evaluated with reference not to individual situations but to the entire association.

Another unsuccessful argument advanced by Dolan-King is important to note. She argued that the rule in effect amended the recorded covenant. If so, the rule would be in conflict and would have to give way to the covenant. However, the court noted that the rules clarified what was "minor" as opposed to "major" construction, and that this clarification was not a conflict.

Finally, although she argued the association did not follow its own policies in enforcing the rule, the court found that she had in fact been provided adequate notice, and that the association's decision-making process was not unfair.

At the trial of Dolan-King II, the association was awarded \$318,293.50. The appellate court upheld this award, and noted the association had not asked for a further award of attorney fees on appeal.

### **What Can Be Learned From These Rulings**

A number of very important principles can be derived from this extended litigation and appellate rulings:

#### For homeowners:

-Do apply for architectural modifications.  
-Don't succumb to the "my home is my castle" mentality...you are part of a community, and thus cannot ignore the interests of your neighbors.

-Do try to avoid litigation with the association if at all possible. The courts, as can be seen from the Dolan-King saga, are supportive of CC&Rs and rules, and the risk of an attorney fee award is substantial.

#### For associations:

-Do make sure your rules are written and distributed to the membership as well as any amendments to those rules.

-Don't deviate from your enforcement procedures and guidelines, regardless of how pleasant or combative the member involved.

-Do check your rules to make sure they are not going beyond the boundaries of your CC&Rs. Important use restrictions should be recorded, to obtain the full benefit of court deference.

-Don't forget to provide the member an opportunity to file a late application prior to commencing enforcement activity. Sometimes the problem is not the change but that the member avoided the proper procedure in making the change.

#### **Postscript**

As of December 2004, the Dolan-King battle with their former HOA is still unresolved. Ms. Dolan-King sold the home before the association recorded its judgment for attorney fees, and she and her husband moved out of state. Ms. Dolan-King, according to published reports, had no other assets in her name.

On June 18, Mr. King failed to appear in court. (San Diego Ranch Coast News, 7/1/04). The judgment is now almost \$400,000, and the association has said it will find King and Dolan-King and collect the money. According to the Association's most recent minutes, settlement talks are under consideration - eight years and hundreds of thousands of dollars after this war began.

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