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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

RAVINDRA K. PANDE,

Plaintiff, Cross-defendant
and Appellant,

v.

LOVE LAMBS II, LLC et al.,

Defendants, Cross-
complainants and Respondents.

2d Civil No. B282611
(Super. Ct. No. 16CV04226)
(Santa Barbara County)

Ravindra K. Pande appeals the trial court's judgment that a planned development's covenants, conditions, and restrictions (CC&Rs) permit his neighbors to temporarily use a portion of his property to complete necessary repairs to their residence. He contends the CC&Rs do not provide easement or access rights. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Casa Blanca Beach Estates is a beachside planned development in Carpinteria. Pande and Love Lambs II, LLC,

own adjoining residences in the development.¹ The CC&Rs govern the development.

Love Lambs undertook a remodeling project that included the addition of two windows on the western wall of its residence. Pande objected to the addition of the windows during hearings before Casa Blanca and Santa Barbara County representatives. In response, Love Lambs modified the plans to restrict views into Pande's home. The county and Casa Blanca both approved the modified plans.

When Love Lambs began work on the remodeling project, an investigation revealed water damage, termites, dry rot, wood-eating fungus, and mold on the west wall of the residence. Repair of the damage required the use of scaffolding on a 3-feet-by-16-feet section of Pande's property.² Pande refused to grant Love Lambs permission to erect the scaffolding.

Pande sought an injunction to prevent Love Lambs from using his property and a declaration that the CC&Rs do not provide an easement over his property. Love Lambs and Casa Blanca cross-complained, seeking an injunction to use Pande's property to erect scaffolding and a declaratory judgment that the CC&Rs grant access to Pande's property to complete the project. The trial court agreed with Love Lambs and Casa Blanca.

¹ Respondent Cortney Fishkin owns Love Lambs. Respondent Cal Fishkin manages it.

² Constructing the residence's western wall from the interior would cost an additional \$90,000.

DISCUSSION

Standard of review

This case requires us to interpret the CC&Rs. The parties disagree over the proper standard of review: Pande contends our review is de novo, while Love Lambs and Casa Blanca contend the substantial evidence standard applies. We apply the de novo standard of review.

“The interpretation of [CC&Rs] is governed by the rules for interpreting contracts. [Citation.]” (*Bear Creek Planning Committee v. Ferwerda* (2011) 193 Cal.App.4th 1178, 1183.) “The mutual intention of the . . . parties at the time the [CC&Rs were] formed governs. [Citations.]” (*Westrec Marina Management, Inc. v. Arrowood Indemnity Co.* (2008) 163 Cal.App.4th 1387, 1392 (*Westrec*)). “We ascertain that intention solely from the written [CC&Rs], if possible” (*ibid.*), but may resort to extrinsic evidence if their terms are uncertain (*Moss Dev. Co. v. Geary* (1974) 41 Cal.App.3d 1, 9 (*Moss*)).

To the extent the trial court did not rely on extrinsic evidence to interpret the CC&Rs, or to the extent the extrinsic evidence was not in conflict, our review is de novo. (*PV Little Italy, LLC v. MetroWork Condominium Assn.* (2012) 210 Cal.App.4th 132, 145 (*PV Little Italy*)). But where the court properly admitted and relied on extrinsic evidence to interpret the CC&Rs, “any reasonable construction will be upheld as long as it is supported by substantial evidence.” (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.)

The trial court determined that four provisions of the CC&Rs govern this dispute. Section 4.02 of the CC&Rs states: “[Casa Blanca] shall have an easement over, under, across[,] and through each Residence Lot where necessary for any

construction, maintenance, repair[,] or other functions required of [it] by [the CC&Rs].” Section 8.02(a) states: “[E]ach owner of a Residence Lot shall, at [their] sole cost and expense, maintain and repair [their] Residence Lot and all improvements thereon, and all landscaping thereon, keeping the same in good condition. In addition, each Owner shall have the improvements on [their] Lot periodically inspected for termites, and if warranted, shall take appropriate corrective measures therefor.” Section 8.02(b) states: “If an owner of any Residen[ce] Lot fails to maintain, demolish, repair[,] or reconstruct the landscaping and improvements on [their] Lot as above set forth, [Casa Blanca] may enter into the Lot and perform the necessary maintenance, demolition, repairs[,] or reconstruction.” Finally, section 11.01 states: “The provisions of [the CC&Rs] shall be liberally construed to effectuate [their] purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Owners.”

The trial court relied on extrinsic evidence to determine that Love Lambs’s project involves both remodeling and necessary repairs: It found “substantial and persuasive evidence that Love Lambs is not only remodeling, but also performing critical repairs required to deal with the result of massive water intrusion—mold, termites, and wood-eating fungus that was pervasive throughout the structure.” The court also relied on extrinsic evidence to conclude that Love Lambs’s “project will enhance and improve the appearance and value of the entire development,” that “[a]ny inconvenience to [Pande] . . . will be relatively short, and [that] the final result will be a substantially improved neighboring property.” But those conclusions had no bearing on the court’s interpretation of the

relevant sections of the CC&Rs. They simply showed the need for repairs to Love Lambs's property and the impact of those repairs, neither of which is in dispute.

In contrast, there is no indication in the trial court's decision that it relied on extrinsic evidence to determine that the CC&Rs grant Love Lambs an easement over Pande's property to make the required repairs: "The [CC&Rs] make direct reference to the need for rapid action where termites are identified . . . [and] require [Casa Blanca] to make a determination if intervention in any construction, maintenance, or repair project is necessary for [it] to properly discharge its duty." "If [Casa Blanca] determines necessity, it has a right, or may delegate a right, to enter on or over Residence Lots to do the work or have the owner do the work at the owner's expense." "The court [thus] agree[d] with [Love Lambs] and [Casa Blanca] that the situation at bar is what is contemplated by the [CC&Rs] and the necessity of an easement [over Pande's property] . . . is a sensible and reasonable interpretation thereof." We therefore independently review whether the CC&Rs permit Love Lambs's use of Pande's property. (*PV Little Italy, supra*, 210 Cal.App.4th at p. 145.)

The CC&Rs grant an easement over Pande's property

Pande contends the CC&Rs do not provide Love Lambs or Casa Blanca an easement or other right to use his property to facilitate Love Lambs's project. We disagree.

To interpret the CC&Rs, "[w]e consider [them] as a whole and construe the language in context, rather than interpret a provision in isolation. [Citation.]" (*Westrec, supra*, 163 Cal.App.4th at p. 1392.) "We interpret words in [the CC&Rs] in accordance with their ordinary and popular sense, unless the words are used in a technical sense or a special meaning is given

to them by usage. [Citation.]” (*Ibid.*) “If [the CC&Rs] language is clear and explicit and does not involve an absurdity, the plain meaning governs. [Citation.]” (*Ibid.*)

The CC&Rs explicitly permit Casa Blanca to take corrective measures to repair the termite damage to Love Lambs’s property. Section 8.02(a) requires Love Lambs to “take appropriate corrective measures” if termites are found. If Love Lambs does not undertake those measures, section 8.02(b) permits Casa Blanca to make repairs. Pande does not dispute that Love Lambs’s remodeling project revealed termites in the home, that the corrective measures Love Lambs seeks to employ are appropriate, or that Casa Blanca may undertake the repairs in Love Lambs’s stead.

Instead, Pande asserts that Casa Blanca is not *required* to undertake the termite remediation, and thus cannot invoke section 4.02’s easement provisions. Specifically, he contends the phrase “required of [Casa Blanca] by [the CC&Rs]” in section 4.02 modifies each term in the series “construction, maintenance, repair[,] or other functions” rather than just “other functions.” But limiting the easement provisions of section 4.02 to only those functions Casa Blanca is required to perform under the CC&Rs would require us to ignore section 11.01’s command to construe the CC&R’s “liberally . . . for the mutual benefit of all Owners.” This we cannot do. (Civ. Code, § 1641 [contract must be construed as a whole, with effect given to every part].) It would also violate the last antecedent rule. (See *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743 [a modifier should be applied to the word immediately preceding it, not others more remote], superseded by statute on another ground as stated in *In re Angelique C.* (2003) 113 Cal.App.4th 509, 518-519; see also

White v. County of Sacramento (1982) 31 Cal.3d 676, 680
[“Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma”].)

Pande’s reliance on the rule against surplusage and the interpretive canons *ejusdem generis* and *noscitur a sociis* in support of his contention is misplaced. First, applying the modifier “required of [Casa Blanca] by [the CC&Rs]” only to “other functions” does not render “other” superfluous; there are several functions in addition to construction, maintenance, and repair discussed in the CC&Rs (e.g., the demolition, reconstruction, rebuilding, and replacement cited in section 8.02(b)). Second, the canon of *ejusdem generis* is not violated if “required of [Casa Blanca] by [the CC&Rs]” applies only to “other functions” because the other functions listed in section 8.02 are similar to construction, maintenance, and repair. (See *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1202 [“if a statute contains a list of specified items followed by more general words, the general words are limited to those items that are similar to those specifically listed”].) Finally, there is no violation of the canon *noscitur a sociis* if “required of [Casa Blanca] by [the CC&Rs]” applies only to “other functions” because a “common thread runs through” the functions set forth in section 4.02 and the “other functions” listed in section 8.02. (See *People v. Garcia* (2016) 62 Cal.4th 1116, 1124.)

Section 4.02 also grants Casa Blanca the right to delegate its easement to another (e.g., Love Lambs) as a reasonable way to make the requirements of section 8.02 “operative . . . and capable of being carried into effect.” (*Moss*,

supra, 41 Cal.App.3d at pp. 9-10.) The interests stated in an easement and those “necessarily incident thereto” pass from the landowner to the easement holder. (*City of Los Angeles v. Howard* (1966) 244 Cal.App.2d 538, 542-543.) Allowing professional construction personnel to enter Casa Blanca’s easement to take corrective actions for termites on Love Lambs’s property is necessarily incident to the easement. (Cf. *id.* at p. 543 [right of entry implied in easement granting right to operate, maintain, and repair power lines].) It is also consistent with the liberal interpretation of the CC&Rs “for the mutual benefit of all Owners” as required by section 11.01, especially where, as here, the evidence established that the “project will enhance and improve the appearance and value of the entire development.” (See also Civ. Code, § 4215.) The trial court’s ruling was correct.³

DISPOSITION

The judgment is affirmed. Respondents are entitled to recover costs and attorney fees incurred in this appeal, in an amount to be determined by the trial court. (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927.)

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TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

³ Given our conclusion, we do not reach Love Lambs’s alternative argument that Pande’s failure to exhaust administrative remedies collaterally estops him from challenging the construction project.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

Allen & Kimball, John H. Parke and James M. Sweeney, for Plaintiff, Cross-defendant and Appellant.

Mullen & Henzell, Mack S. Staton; Will Tomlinson, for Defendants, Cross-complainants and Respondents Love Lambs II, LLC, Cortney Fishkin and Cal Fishkin.

Price, Postel & Parma, Christopher E. Haskell and Timothy E. Metzinger, for Defendant, Cross-complainant and Respondent Casa Blanca Beach Estates Owners' Association.