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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE VILLAGE CONDOMINIUM OWNERS' ASSOCIATION, INC., Plaintiff and Respondent, v. OCEAN CLUB APARTMENTS, LLC et al., Defendants and Appellants.	B228905 (Los Angeles County Super. Ct. No. YC060244)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cary H. Nishimoto, Judge. Affirmed.

Nemecek & Cole, Jonathan B. Cole and Susan S. Baker for Defendants and Appellants.

Raiskin & Revitz and Steven J. Revitz for Plaintiff and Respondent.

INTRODUCTION

Defendants Village at Redondo, LLC (VAR), erroneously sued as Ocean Club Apartments, LLC, and Lyon Management Group, Inc. (Lyon) appeal from a judgment entered in favor of plaintiff The Village Condominium Owners' Association, Inc. (the Association). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Association sued defendants VAR and its agent, Lyon, after Lyon implemented new rules restricting use of VAR's recreational facilities by the Association's condominium owners and tenants.

For purposes of trial, the parties stipulated to the following facts:

"1. The Association's members (the 'Members') consist of the owners of the units and common areas of the Village Condominiums condominium project (the 'Village Condominiums').

"2. VAR is the owner of an apartment complex located next to the Village Condominiums (the 'Apartment Complex').

"3. Lyon manages the Apartment Complex for VAR.

"4. VAR is the successor in interest to Lincoln Properties Partners I ('Lincoln') which formerly owned the Apartment Complex and developed the Village Condominiums.

"5. On or about July 27, 1973 the Association and Lincoln entered into an Agreement for Sharing Use of Recreational Facilities (the '[Agreement]') . . . .

"6. Pursuant to section 9 of the [Agreement] it was binding on Lincoln's successors.

"7. On or about July 12, 1976 Lincoln signed a Grant Deed pertaining to the Apartment Complex (the 'Grant Deed') . . . .

"8. The Grant Deed was recorded with the Los Angeles County Recorder.

"9. VAR acquired the Apartment Complex with knowledge of the [Agreement] and the Grant Deed and subject thereto.

"10. On May 11, 2009 Lyon, acting as the managing agent for VAR, gave notice to the Association and the Members that new rules, regulations and procedures (collectively the 'New Rules') were being established with regard to the recreational facilities referred to in the [Agreement] (the 'Recreational Facilities'[1]) effective July 1, 2009.

"11. A copy of the New Rules is . . . in evidence.

"12. The New Rules provide, among other things:

"(a) The Members have to pay $50 per month for access to the Recreational Facilities;

"(b) The Members are limited to one guest in the use of the Recreational Facilities;

"(c) Defendants have the right to suspend access to the Recreational Facilities for a failure to timely pay a monthly fee in addition to the $400 per month the Association is to pay pursuant to the [Agreement];

"(d) Defendants have the right to suspend or terminate the use of the Recreational Facilities by any Member, resident of the Village Condominiums ('Residents') or guests (the 'Guests') based on any violation of any of the New Rules;

"(e) Lyon or any other agent of VAR has the right to permanently close any of the Recreational Facilities;

"(f) Lyon or any other agent of VAR has the right to unilaterally close the Recreational Facilities or restrict access thereto for cleaning, repairs, maintenance and other similar or related activities;

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1 Some of the quoted material from documents refers to the Recreational Area and the Recreational Facilities as separate components. Except in quoted material, however, we will hereafter refer to the Recreational Area and the Recreational Facilities collectively as the Recreational Facilities for ease of reference.

"(g) Defendants have the obligation to replace a FOB for access to the Recreational Facilities ('FOB') only if it is lost, stolen or misplaced and they have the right to charge $150 for the replacement of a FOB;

"(h) Defendants may charge a deposit of $150 for a FOB;

"(i) Defendants may limit each unit in the Village Condominiums to one FOB;

"(j) Guests must be accompanied at all times by a Member or Resident when using the Recreational Facilities;

"(k) Minors under the age of 14 are prohibited from using the fitness center;

"(l) Persons between the ages of 14 and 18 are prohibited from using any of the Recreational Facilities unless supervised by a parent or other reasonable adult;

"(m) Defendants can prohibit any person having a skin abrasion, a cold, a cough or wearing a bandage from using the pool or the spa;

"(n) Defendants can prohibit all electronic devices at the Recreational Facilities except for radios, music players and portable TV's used in conjunction with earphones; and

"(o) The Members are obligated to sign the 'Amenity Use Agreement' or the other documents which are part of the New Rules as a condition for using the Recreational Facilities.

"13. On or about June 1, 2009 defendants implemented the New Rules.

"14. In implementing the New Rules defendants initially prohibited the Members, the Residents and the Guests from using the Recreational Facilities except in accordance with the New Rules.

"15. In implementing the New Rules access to the Recreational Facilities can only be obtained with a FOB issued by defendants or through access provided by defendants' personnel."

On the day before trial, VAR and Lyon also stipulated that: "(i) they are no longer seeking to charge any of the Members or the Residents $50 per month for use of any of

the Recreational Facilities and payment of the $400 monthly fee provided for in the [Agreement] and the Grant Deed is all that is required for the Members, the Residents and the Guests to use the Recreational Facilities; (ii) defendants will not require a deposit of any of the Members or the Residents in order to obtain a FOB; and (iii) the Members and the Residents need not sign the Amenity Use Agreement in order to obtain access to the Recreational Facilities or to obtain a FOB for access to the Recreational Facilities."

Shortly after VAR and Lyon implemented the New Rules, the Association filed its complaint in this case. The complaint alleged causes of action for breach of the Agreement (first cause), declaratory relief that would render many of the New Rules inapplicable and unenforceable as to the Members, Residents and Guests (second cause), an injunction restraining VAR and Lyon from denying access to the Recreational Facilities unless they complied with the New Rules (third cause), and specific performance (fourth cause). The fourth cause of action became moot.

After a one-day court trial, the trial court asked the Association and VAR/Lyon each to submit proposed findings of fact and a proposed judgment. The trial court accepted and adopted the proposed findings and judgment proffered by the Association.

The trial court's findings included the following findings relevant to this appeal:

"6. Until the day before the trial of this case it was the position of defendants that the Members and the Residents had to pay a $50 monthly fee in order to use the Recreational Facilities although defendants had not enforced that rule pending the trial of this case."

"33. All 323 units in the Village Condominiums paid a $150 deposit (the 'Key Deposit') for a 'hard' key to the Recreational Facilities (the 'Keys') prior to June 1, 2009."

"34. As of June 1, 2009 the Keys were useless and had no value."

"35. Defendants have not returned any of the Key Deposits to the Members or the Residents."

The judgment awarded $88,676.31 as breach of contract damages for lost use of the Recreational Facilities and for Key Deposits. The judgment also made declarations

that rendered many of the New Rules unenforceable against Members, Residents and Guests.

DISCUSSION

VAR and Lyon challenge the award of damages for the Key Deposits and four of the declarations made by the trial court. We conclude there is no merit to their claims.

A. *Damage Award for Key Deposits*

Of the total amount awarded as breach of contract damages, $48,450 was for Key Deposits made by the Members or Residents, or their predecessors, in the amount of $150 for each of the 323 condominiums for keys to access the Recreational Facilities before June 1, 2009, when the New Rules were implemented. VAR and Lyon then changed from keys to electronic fobs for access.[2]

VAR and Lyon appeal the award for Key Deposits. They contend that the award must be reversed, in that the Association did not plead the Key Deposits as damages in their complaint.[3] They claim that, in any event, substantial evidence does not support the award. We disagree.

At trial, the Association offered evidence concerning the Key Deposits. VAR and Lyon made no objection to the evidence; they offered rebuttal evidence. Counsel for the Association and counsel for VAR and Lyon argued the Key Deposit evidence in closing

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[2] VAR and Lyon do not challenge the remainder of the contract damages, $40,226.31. They were for the value of the lost use of the recreational facilities by the Members and Residents during the period from June 1 through September 11, 2009.

[3] The prayer for relief as to the first cause of action, breach of contract, was "[f]or general and special damages according to proof but not less than $25,000." No facts or allegations in the first cause of action expressly related to defendants' failure to return the $150 Key Deposits. The complaint did include, however, a provision that the Association would ask to amend the complaint to state the amount of damages when they were ascertained or proven.

arguments. In their post-trial proposed findings and judgment, VAR and Lyon made no mention of any failure to plead damages for Key Deposits. Nor did they move for a new trial. In sum, VAR and Lyon did not raise any claim or objection that the Association did not expressly plead the Key Deposits as damages in their complaint and, therefore, could not recover them on behalf of its Members. VAR and Lyon raised the issue for the first time on appeal.

The principle is well established "'that issues not raised in the trial court cannot be raised for the first time on appeal. [Citations.]'" (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 603.) Failure to raise a theory in trial court proceedings ordinarily constitutes forfeiture of the issue on appeal. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28-29.) We conclude that VAR and Lyon forfeited their claim of failure to plead, in that they did not raise such an objection in the trial court.

The Association maintains that substantial evidence supports the findings justifying the award of damages for Key Deposits. We agree. Substantial evidence "is evidence which is of ponderable legal significance. It must be 'reasonable in nature, credible, and of solid value . . . . [Citations.] . . . [T]he focus is on the quality, not the quantity of the evidence." (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871.) The testimony of a single credible witness may be sufficient to constitute substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) In determining whether substantial evidence supports a trial court's determination, we view the evidence in the light most favorable to the determination and draw all inferences as well as resolve all conflicting evidence in favor of the trial court's decision. (*Ibid.*)

Here the court heard testimony from two witnesses, a Lyon manager and a Member of the Association, that Members previously were required to pay a $150 deposit for a key and the key had become useless as of June 1, 2009.[4] The Lyon manager

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[4] At trial, Ron Cole (Cole) testified that he oversaw the apartment property in his capacity as an asset manager for Lyon. He testified that, assuming the Members and

testified that, pursuant to the policy of VAR and Lyon, each Member and Resident who had paid the Key Deposit was entitled to a refund, given that the key could no longer provide access to the Recreational Facilities. VAR and Lyon witnesses testified that they did not have records showing that a $150 deposit was paid for each of the 323 condominiums.[5] The Association did not offer proof of payment of a Key Deposit for every condominium. Nevertheless, from the testimony given, the trial court could reasonably infer that at least one person per condominium had paid a Key Deposit during the time between the first occupancy of the Village Condominiums and June 1, 2009, when the keys became useless. (*In re Marriage of Mix*, *supra*, 14 Cal.3d at p. 614.) Thus, substantial evidence supports the trial court's determination that defendants were liable for return of Key Deposits in the sum of $48,450 (i.e., 323 x $150).

B. ***Declaratory Relief***

The Association's second cause of action was for declaratory relief as to 15 matters covered in the New Rules. VAR and Lyon challenge the following four

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Residents had paid the Key Deposit, "[t]echnically speaking," they were entitled to the return of the $150 deposit. Cole said that he believed that each Member paid a deposit of $150 for the keys in use prior to Lyon changing to the fobs. He acknowledged that after the New Rules were implemented, the keys were no longer usable. According to Cole, Lyon and VAR had not refunded any of the Key Deposits. In preparation for the fob system under the New Rules, Cole explained, Lyon considered increasing the fob deposit from $100 as originally planned to $150 in order to avoid having to make a $50 refund to each Member who had previously paid a Key Deposit. Before trial, however, VAR and Lyon implemented a policy that no fob deposit would be required.

Greg Tiritilli became a Member about 13 years prior to trial and owned two of the condominiums. He testified that, when he became a Member, he paid a $150 Key Deposit and obtained a key for each condominium, and he still had the keys. He testified that, as of June 1, 2009, the keys no longer worked.

[5] At trial, Cole testified that he did not believe Lyon had records showing that a Key Deposit had been paid for all the condominiums. Diane Stillman testified that, during the almost 13 years since she became the property director for the Apartment Complex, she did not collect any Key Deposits and she had no record of Key Deposits being collected prior to her employment.

declarations made by the trial court: (1) "The Members and Residents cannot be limited to one Guest in the use of the Recreational Facilities." (Judgment, para. 2(b).) (2) "[VAR and Lyon] have no right to suspend or terminate the use of the Recreational Facilities by any Member, Resident or Guest based on any violation of the New Rules." (*Id.*, para. 2(d).) (3) "Neither Lyon nor any other agent of VAR has the right to permanently close the swimming pool or the gym which are part of the Recreational Facilities." (*Id.*, para. 2(e).) (4) "Guests need not be accompanied at all times by a Resident when using the Recreational Facilities." (*Id.*, para. 2(j).)

VAR and Lyon contend that the trial court's interpretation of the Agreement and the Grant Deed as support for the four declarations was erroneous as a matter of law and, therefore, the declarations cannot stand. We disagree.

The relevant provisions of the Agreement and the Grant Deed are very similar and consistent with each other. The Agreement granted the right of the Association to allow Members, Residents and Guests to use the Recreational Facilities.[6] (Agreement, § 5.)

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[6] The pertinent Agreement provisions are as follows:

"5. Lincoln hereby grants to the Association the right to use and the right to allow each of the owners of condominium units . . . , their lessees and guests, to use the recreational facility . . . , with the right to use [a specified portion of the Apartment Complex property] solely for ingress to and egress from the recreational facility. The use of the recreational facility and the . . . path thereto shall be subject to such rules and regulations as to the time and manner of use as may be promulgated from time to time by Lincoln, provided that said rules and regulations shall be equally applicable to the owners of condominium units and/or tenants of apartment units [and] their respective lessees and guests . . . . In consideration for the rights granted herein, the Association shall pay to Lincoln . . . the sum of Four Hundred Dollars ($400.00) per month. All the costs of operation, maintenance, repair, replacement, and capital improvements [of the Recreational Area and Facilities] shall be the sole responsibility of Lincoln [and, therefore, VAR as Lincoln's successor in interest] and the nature and extent of same shall be determined solely by Lincoln [i.e., VAR]. [¶] . . . [¶]

"7. . . . [T]he Association may include the $400.00 a month cost in the common area maintenance expenses to be assessed to the condominium unit owners.

"8. . . . At such time as that existing first deed of trust on [the Apartment Complex property] is reconveyed, Lincoln and the Association will convert this agreement to a recorded easement."

The Grant Deed granted to each Member a non-exclusive easement appurtenant to the Village Condominiums property and to each condominium therein for use and enjoyment of the Recreational Facilities.[7] (Grant Deed, § 3.) Both instruments required that the use of the Recreational Facilities would be "subject to such rules and regulations as to the time and manner of use" as the Apartment Complex owner may promulgate. (Agreement, § 5; Grant Deed, § 4.1.) They also specified that the only payment for use of the Recreational Facilities was to be a monthly payment of $400 to be made by the

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[7] The relevant provisions of the Grant Deed are as follows:

"3. Grant of Easement [¶] For a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [Lincoln] hereby grants to [the developer of the condominium project], the Association and to each of the owners of the 323 condominiums . . . and to their respective successors in interest, a non-exclusive easement appurtenant to [the condominium property], and to each condominium therein, over the Recreational Area, for use and enjoyment of the Recreational Facilities and for ingress to and egress from the Recreational Facilities. The use of said easement shall be subject to all of the terms and conditions hereinafter set forth.

"4. Conditions of Use [¶] 4.1 The use of the Recreational Facilities pursuant to said easement shall be subject to such rules and regulations as to the time and manner of use as may be promulgated from time to time by [Lincoln], provided that said rules and regulations shall be equally applicable to the owners of condominiums and/or tenants of apartment units, their respective lessees and guests . . . .

"4.2 As a condition of the right of condominium owners . . . to use said easement, the Association shall pay to [Lincoln] . . . the total sum of $400 per month. [The monthly payment] shall constitute payment in full of all obligations owing to [Lincoln] by the Association under [the Agreement]. All of the costs of operation, maintenance, repair, replacement, and capital improvements with respect to the Recreational Area and Recreational Facilities shall be the sole responsibility of [Lincoln].

"5. Covenants of [Lincoln] [¶] 5.1 [Lincoln] covenants and agrees to cause the Recreational Area and the Recreational Facilities to be maintained in good condition and repair, in keeping with generally prevailing standards of maintenance and repair for similar recreational facilities included in first class apartment or condominium projects in the southern California area similar in size and design to the apartment project . . . . The foregoing covenants and agreements shall run with the land in [the Apartment Complex property], shall be binding on all parties having or acquiring any right, title or interest in [the Apartment Complex property] or any part thereof, and shall be for the benefit of each owner of any portion of [the condominium property] and each successor in interest of such owners."

Association, for which the Association could then assess the Members as part of the common area maintenance expenses. (Agreement, §§ 5, 7; Grant Deed, § 4.2.) The Apartment Complex owner was obligated to maintain the Recreational Facilities in good condition and repair (Grant Deed, § 5.1) and to bear all the costs for such maintenance (Agreement, § 5). The Grant Deed specified that the covenants and agreements set forth in the deed ran with the land in the Apartment Complex, were binding on all parties having or acquiring an interest in that land, and were for the benefit of each Member. (Grant Deed, § 5.1.)

We review the trial court's declarations under the abuse of discretion standard. "'"The purpose of declaratory relief is to liquidate uncertainties and controversies which might result in future litigation and whether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion. Unless a clear abuse of discretion is shown, the trial court's decision will not be disturbed on appeal."' [Citation.] [¶] ' . . . To be entitled to relief on appeal from the result of an alleged abuse of discretion it must clearly appear that the injury resulting from such a wrong is sufficiently grave to amount to a manifest miscarriage of justice . . . .' [Citation.]" (*Interstate Marina Development Co. v. County of Los Angeles* (1984) 155 Cal.App.3d 435, 443-444.)

The trial court based its declarations on its interpretation of the Agreement and the Grant Deed as to the rights and obligations of VAR in relation to those of the Association, Members, Residents and Guests. Thus, whether the trial court abused its discretion turns on whether the declarations are supported by the two documents when they are properly interpreted.

Where, as in this case, the language of a contract or deed is unambiguous and there is no conflicting evidence relevant to its interpretation, we are not bound by the trial court's interpretation. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 238.) The interpretation is purely a question of law. (*City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 620.) We must independently interpret the contract and the deed in accordance with "the generally accepted canons of interpretation

so that the purposes of the instrument may be given effect." (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; accord, *City of Manhattan Beach*, *supra*, at p. 238.)

"The goal of contractual interpretation is to determine and give effect to the mutual intention of the parties." (*Safeco Ins. Co. v. Robert S.* (2001) 26 Cal.4th 758, 763; *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) "That intent is to be inferred, if possible, solely from the written provisions of the contract." (*Pardee Construction Co. v. Insurance Co. of the West* (2000) 77 Cal.App.4th 1340, 1352.) "Where contract language is clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further." (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 53.)

VAR and Lyon assert that a plain reading of section 5 of the Agreement and section 4.1 of the Grant Deed gives VAR the absolute contractual right to promulgate rules and regulations for use of the Recreational Facilities by Members, Residents and their Guests, so long as the rules and regulations are equally applicable to the residents of the apartments. The plain language that VAR and Lyon refer to in the Agreement and the Grant Deed is as follows: "The use of the [Recreational Facilities] . . . shall be subject to such rules and regulations as to the time and manner of use as may be promulgated from time to time by [the Apartment Complex owner], provided that said rules and regulations shall be equally applicable to the owners of condominium units and/or tenants of apartment units [and] their respective lessees and guests . . . ." As VAR and Lyon claim, the language does give VAR and its agent Lyon authority to promulgate rules and regulations. However, it also plainly limits the scope of the rules and regulations to "the time and manner of use" of the Recreational Facilities. Their contractual authority does not extend to all matters which the New Rules purport to govern.

Other provisions in the Agreement and the Grant Deed effectively impose limitations on the rule-making authority of VAR and Lyon, although they do not expressly mention or refer to that authority. Key provisions establish the property rights of each Member to have access to and unlimited use of the Recreational Facilities and to

allow the associated Residents and Guests to have the same degree of access and use as the Member has. Section 3 of the Grant Deed grants to the Association and each Member "a non-exclusive easement appurtenant to [the condominium property], and to each condominium therein, over the Recreational Area, for use and enjoyment of the Recreational Facilities." (See Agreement, § 5; Grant Deed, § 3.) It should go without saying that the broad property rights created by the Agreement and the Grant Deed take precedence over the limited authority of VAR and Lyon to promulgate rules as to the time and manner of use of the Recreational Facilities. (*Whalen v. Ruiz* (1953) 40 Cal.2d 294, 302 ["it is well settled that 'both parties have the right to insist that so long as the easement is enjoyed it shall remain substantially the same as it was at the time the right accrued'"]; accord, *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 694-695.)

Three of the four challenged declarations are supported by the language in section 5 of the Agreement and section 3 of the Grant Deed. The plain language of the provisions establishes a property right in each Member, associated Resident and associated Guest to use the Recreational Facilities. Neither VAR nor Lyon has unilateral authority to limit that right. (*Youngstown Steel etc. Co. v. City of L.A.* (1952) 38 Cal.2d 407, 410-411 [an easement "cannot be substantially changed without the consent of both parties"].)

The property rights arising from the plain language of the provisions are broad. Thus, the language supports the trial court's declaration that "[t]he Members and Residents cannot be limited to one Guest in the use of the Recreational Facilities." (Judgment, para. 2(b).) There is nothing in the Agreement or the Grant Deed that limits the number of Guests a Member or Resident may allow to use the Recreational Facilities.[8] By the same token, the language supports the trial court's declaration that

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[8] The record reveals no evidentiary basis for claiming that the limitation to one Guest was reasonably related to regulating the "manner of use" of the Recreational Facilities. The asset manager for Lyon who oversaw the Apartment Complex, Cole, testified that the purpose of imposing the one Guest limit was to prevent possible overcrowding. He also testified, however, that prior to the New Rules, there had never

"[VAR and Lyon] have no right to suspend or terminate the use of the Recreational Facilities by any Member, Resident or Guest based on any violation of the New Rules." (*Id.*, para. 2(d).) As we previously explained, neither VAR nor Lyon has unilateral authority to deprive a Member from exercising his or her property right to use the Recreational Facilities and to allow his or her associated Residents and Guests to use them. (*Youngstown Steel etc. Co. v. City of L.A.*, *supra*, 38 Cal.2d at pp. 410-411.) Nor is the property right of the Members to allow Residents and Guests to use the Recreational Facilities limited in such a way as to require that a Guest be accompanied by a Member or Resident. Accordingly, the language supports the trial court's declaration that "[G]uests need not be accompanied at all times by a Resident when using the Recreational Facilities." (Judgment, para. 2(j).)

The same language in section 5 of the Agreement and section 3 of the Grant Deed establishing a property right in each Member also supports the trial court's declaration that "[n]either Lyon nor any other agent of VAR has the right to permanently close the swimming pool or the gym which are part of the Recreational Facilities" (Judgment, para. 2(e)). In addition, other provisions expressly require VAR to maintain the Recreational Facilities at VAR's sole expense; nothing gives VAR the unilateral authority to permanently close any part of the Recreational Facilities. (*Youngstown Steel etc. Co. v. City of L.A.*, *supra*, 38 Cal.2d at pp. 410-411.) Section 5 of the Grant Deed sets forth the covenant running with the land for the benefit of the Members granted by VAR's predecessor-in-interest "to cause the Recreational Area and the Recreational Facilities to be maintained in good condition and repair, in keeping with generally prevailing standards of maintenance and repair for similar recreational facilities included in first class apartment or condominium projects in the southern California area similar in size and design to the apartment project . . . ." Section 5 of the Agreement obligates VAR to

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been a problem with overcrowding. The Member who testified at trial, Greg Tiritilli, said that he was not aware of any prior restriction on the number of Guests that a Member or Resident could allow to use the Recreational Facilities.

bear "[a]ll the costs of operation, maintenance, repair, replacement, and capital improvements" of the Recreational Facilities.

We conclude that the plain language of the Agreement and the Grant Deed support the challenged declarations. The trial court did not abuse its discretion in making the declarations; there is no manifest miscarriage of justice. (*Interstate Marina Development Co. v. County of Los Angeles, supra,* 155 Cal.App.3d at pp. 443-444.)

DISPOSITION

The judgment is affirmed. Plaintiff shall recover its costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.