Courts Continue to Struggle With Enforcing Arbitration Provisions in CC&Rs Against Homeowners Associations

By Kathleen F. Carpenter

In a published opinion dated July 30, 2010, the California Fourth District Court of Appeal summarily invalidated an arbitration agreement between a developer and a homeowners association. In the case of *Pinnacle Museum Tower Assn. v. Pinnacle Market Development* (US) LLC (July 30, 2010, D055422) ___ Cal.App.4th ___ [2010 DJDAR 11868], the Court of Appeal found that an arbitration provision in the CC&Rs did **not** constitute an "agreement" with the association and was therefore insufficient to waive the constitutional right to jury trial for construction defect claims brought by the homeowners association. The Court also found the jury waiver provision in the purchase and sale agreements was not enforceable because it was found to be "unconscionable."

In our e-Update of July 28, 2010 (see next page), we reported that on June 25, 2010, the Court of Appeal granted rehearing in the case of *Villa Vicenza Homeowners Association v. Nobel Court Development, LLC* ("*Villa Vicenza*") and directed further briefing. We also noted that a somewhat different panel of the same court had under submission another case (Pinnacle) which also had before it the issue of whether an arbitration provision contained in CC&Rs binds a homeowners association.

The Court in Pinnacle gave little credence to the long-standing approval of arbitration provisions by The California Department of Real Estate. It also misinterpreted and summarily dismissed the legislative intent behind SB800, known as California's "Right to Repair Law." The express legislative intent of SB800 was to create sweeping reform to promote the fair and prompt resolution of construction defect claims, which, prior to SB800, generally meandered through the complex litigation departments of superior courts for years before being resolved through settlement. In his concise dissent in Pinnacle, Justice O'Rourke stated he did not find the arbitration provision at issue to be unconscionable, and stated that he would have followed the conflicting opinion of *Villa Milano Homeowners Assn. v. Il Davorge* (2000) 84 Cal.App.4th 819, 824-825.

To be continued…

Resources.

Court of Appeal Withdraws Ruling That Arbitration Provisions in CC&Rs Are Not Enforceable Against a Homeowners Association
June 28, 2010 > The complete article follows this e-Update.

Court of Appeal Rules That Arbitration Provisions in CC&Rs Are Not Enforceable Against a Homeowners Association
June 2, 2010 > The complete article follows this e-Update.

Contact Us.

Please contact a member of Luce Forward's Common Interest Development group if you would like to discuss the impact of this decision on current arbitration provisions utilized in CC&Rs or to discuss strategies for the continued use of arbitration provisions new project documents.