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HOA Action to Enforce Mediated Settlement Agreement Is an "Action to Enforce the Governing Documents," Providing Statutory Basis for Attorneys' Fee Award

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It's always about the attorneys' fees, and who pays for them when legal disputes arise, isn't it? Many statutory schemes are designed to treat negotiation and mediation as the primary mechanism to resolve disputes. The approach keeps costs down, and it also achieves quick resolution in many kinds of disputes, including those involving condominiums and other common interest developments. In California, these entities and their members depend on the dispute resolution provisions of the Davis-Stirling Common Interest Development Act, Civil Code §§ 5850-5985 ("Act").

In *Rancho Mirage Country Club Homeowners Association v. Hazelbaker* (E063272, filed 8/6/16), the California Court of Appeal held that an action filed by a homeowners association to enforce a settlement agreement resulting from mandatory mediation under the Act constitutes an "action to enforce the governing documents," thus forming the basis for the fee-shifting provisions of the Act.

The homeowners obtained HOA approval to make improvements to their patio in compliance with the HOA's conditions, covenants, and restrictions ("CC&Rs"). The HOA determined the improvements exceeded the scope of the approval and requested mediation as required by the Act. At the mediation, the parties reached an agreement that provided for modifications to the patio, a special assessment for the homeowners to pay a portion of the HOA's attorneys' fees incurred through mediation, and a prevailing party attorneys' fees clause regarding any subsequent legal action arising out of the agreement.

The modifications were not completed on time, and the HOA filed a court action seeking specific performance of the agreement and attorneys' fees and costs of the litigation. The parties reached agreement on the modifications but not on who should bear the attorneys' fees and costs in the litigation.

Section 5975(c) of the Act provides: "In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs." This is a mandatory fee-shifting provision, but the court has discretion as to the amount of fees and costs to award. In this case, the trial judge found the HOA to have been the prevailing party and awarded it attorneys' fees and costs.

The defendants nevertheless appealed and contended, among other things, that the enforcement of the mediated settlement agreement did not constitute "an action to enforce the governing documents," and so the HOA should not have been entitled to an award of fees at all.

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The Court of Appeal stated:

> The Davis-Stirling Act is intended, among other things, to encourage parties to resolve their disputes without resort to litigation, by effectively mandating pre-litigation ADR. (See § 5930, subd. (a) . . . Narrowly construing the phrase "action to enforce the governing documents" to exclude actions to enforce agreements arising out of that mandatory ADR process would discourage such resolutions, and encourage gamesmanship. For example, a party might agree to a settlement in mediation without any intention of fulfilling its settlement obligations, but simply to escape the cost-shifting provisions of the Davis-Stirling Act. It is unlikely, therefore, that a narrow construction is preferable. [footnote omitted]
> . . . .
> Moreover, the gravamen of the Association's complaint is that defendants have not taken certain steps to bring their property into compliance with the applicable CC&Rs. . . . The circumstance that the steps to bring the property into compliance with CC&Rs were specified a mediation agreement does not change the underlying nature of the dispute between the parties, or the nature of the relief sought by the Association.

Therefore, the Court of Appeal held that the Davis-Stirling Act was the proper basis for an award of attorneys' fees and costs to the prevailing party. Under the Act, the prevailing party is the one who, on a practical level, achieved its main litigation goals. *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal. App. 4th 1568, 1574. Here, because the HOA in fact achieved its pre-litigation *and* litigation goals of having the homeowners make modifications to their patio and thus securing their compliance with the CC&Rs, the Court of Appeal held that the trial court did not abuse its discretion in determining the HOA to be the prevailing party.

And, because "'[a] statute authorizing an attorney fee award at the trial court level includes appellate attorney fees unless the statute specifically provides otherwise' (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1499.)," the Court also awarded the HOA its *appellate* costs and fees.

Lessons from this one? In ADR proceedings, especially when they are statutorily mandated, seriously consider applicable fee-shifting statutes and build a result into the settlement agreement. Shrugging them off or playing hardball can lead to throwing good money after bad. This works both ways in HOA disputes. Think about how many patios or common area improvements that money could buy!

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