

E-Newsletter

Speak Now or Forever Hold Your Peace - Caution in Settling Claims - Kellie J. Callahan, Esq.

“Speak Now or Forever Hold Your Peace.” These words are seldom (if ever) part of our legal discussion about HOAs, Boards of Directors, their meetings, CC&R violations or architectural guidelines. But in a recent decision, the Maricopa County Superior Court (*Apache Wells v. Stromme*, CV2008-092008) incorporated this truism into its ruling in an HOA enforcement case. While this is a non-binding decision of the superior court, the Court’s ruling is a helpful (and painful) reminder to all about the need for precision and proper advice when settling any dispute with a homeowner.

This matter began as a dispute between the Association and over 100 of the community’s owners. According to Court records, the dispute was contentious and emotions ran high.

During the lawsuit, the Association sent a letter to one of the homeowner/plaintiffs in the larger case regarding a violation of a height restriction of a wall at his property. Within a few months, the 100-owner lawsuit was settled and dismissed. The parties entered into an agreement that contained very broad release terms. The Agreement stated, in relevant part:

The...Association [and all other named homeowner defendants]...hereby fully and completely release and discharge Plaintiffs in the broadest manner...from any and all conceivable claims... which the Defendants may now have, known or unknown on account of, related to, or that may in any way grow out [of] the subject of the complaint and all related pleadings, including without limitation and all known or unknown claims which were asserted or could have been asserted in the action [emphasis added].

Months later, the Association was forced to file a lawsuit against the same owner to force him to cure the wall violation. This homeowner defended the suit alleging that the expansive settlement language gave him a free pass on any and all claims the Association might bring. The Court in the enforcement case agreed. The Court reasoned that the terms of the settlement agreement in the earlier case had released the homeowner from any claim based on the alleged CC&R violation.

The “speak now, or forever hold your peace” platitude seems strangely appropriate. Because of the broad (perhaps overly so) language in the settlement agreement in one case, any claim which existed at the time of that settlement, and which *could have* been brought between the parties involved in the prior dispute, had been waived.

The lesson here is simple: use the utmost caution when entering into settlement agreements. Broad release language that happily ends one dispute might just seriously impact the Association’s claims in another dispute. It is best to have any release agreement carefully reviewed by an Association attorney. Speak now, or the heated dispute that is settled today, may just be a homeowner’s peace of mind on the CC&R violation or assessment delinquency of tomorrow.



CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Wood, PLC

newsletter@carpenterhazlewood.com

Telephone - (480) 991-6949