

Homeowner Pays the Price for Non-Compliance with HOA Covenants Find Out Why Owner Refuses to Repaint House Trim

by [Lawrence Szabo, Esq.](#) | Jul 27, 2022 | [Case Decisions](#), [Dispute Resolution](#)

This case involved a dispute between a homeowner (“Owner”) and his homeowners association (“Association”) over Owner’s repainting of the trim on his home without first seeking and obtaining approval from Association as required by Association’s CC&Rs. The primary issue involved was the color of the trim that Owner used.

After Owner painted the trim on his home a color that had not been approved by Association, Association attempted to resolve the situation amicably by the parties agreeing to submit the issue to an architect. The architect recommended changing the color of the trim and Owner and Association purportedly agreed to the recommended change although the agreement was not reduced to a written settlement agreement. Nb Thereafter, Owner failed to comply with the color change that had been agreed upon with the architect and Association filed a complaint against Owner for breach of contract. The breach alleged by Association in its complaint was a breach of the CC&Rs and Association did not mention the settlement agreement that was made with the assistance of the architect in its lawsuit. The relief sought by the Association in the lawsuit was: (i) an injunction compelling Owner to change the trim color, or allowing Association to enter Owner’s property to change the color of the trim; and (ii) an award of attorney’s fees and costs.

In defense of Association’s complaint, Owner admitted having changed the color of the trim on his property without Association’s approval but raised the defense of estoppel, contending that Association should be estopped from enforcing the subject provision in the CC&Rs against him because it had engaged in “selective enforcement” of the CC&Rs by allowing multiple other owners to make similar changes without Association’s approval.

The trial court granted Association’s motion for summary judgment and issued an injunction requiring Owner to obtain Association’s approval of paint color and directing the repainting of the trim on Owner’s home in the approved color. The

trial court also awarded Association \$75,921.48 in attorney's fees. Owner then appealed the trial court's judgment and the attorney fee award.

On appeal, Owner contended that the breach was of the settlement agreement that had been reached and not the CC&Rs, and since the settlement agreement did not have a provision for an award of attorney's fees, the trial court erred in awarding Association its attorney's fees. Owner further maintained its selective enforcement defense.

The appellate court found that the trial court's judgment was based on a breach of the CC&Rs and not the settlement agreement, so the award of attorney's fees was appropriate. Regarding Owner's estoppel defense, the appellate court found that Owner did not offer any facts to support the alleged defense. Instead, Owner merely made allegations of selective enforcement but did not support them by evidence. The court commented that Owner should have tended evidence of addresses, photographs, or affidavits from other homeowners to support his claim of selective enforcement of the CC&Rs by Association. Accordingly, the appellate court affirmed the trial court's judgment granting the injunctive relief in favor of Association and the award of attorney's fees in the amount of \$75,921.48.