

Court Rejects Owner's Affirmative Defenses and Orders Owner to Remove Unapproved Wall Constructed in Front Yard

by [Lawrence Szabo, Esq.](#) | Jun 17, 2022 | [Case Decisions](#), [Governing Documents](#), [Ownership and Transfer of Interest](#)

This case involved a dispute between a homeowner (“Owner”) and her homeowners association (“Association”) over Owner’s right to construct a wall across her front yard. At issue was a provision in Association’s Architectural Guidelines that restricts homeowners from installing any walls or fences in the front “setback,” which encompasses the area from the property line in the center of the street to the front of the home. This provision effectively prohibited the construction of walls or fences in the front yard.

Owner sought Association’s consent to multiple proposed modifications to her property which included: Modifications to the landscaping in her front yard; painting; a patio cover in the rear yard; new rain gutters; and stucco walls in the side and front yards. Association gave Owner a “partial” approval of the requested modifications and informed Owner that her request to construct stucco walls in the front yard of her property were denied.

In disregard of the denial, Owner commenced construction of the wall in the front yard of her property and ignored repeated requests by Association for her to stop the construction. After attempts to resolve the issue through informal dispute resolution procedures, Association filed suit against Owner seeking a permanent injunction requiring her to remove the wall. In defense of Association’s action, Owner claimed that Association’s denial prohibited the construction of a “stucco” wall in the front yard, and she was constructing a wall that did not include stucco.

The trial court found that Owner willfully violated Association’s CC&Rs by constructing the wall and issued the injunction requested by Association. Owner then appealed the trial court’s ruling contending the trial court committed reversible error by failing to find that: (i) the affirmative defense of equitable estoppel was applicable; and (ii) Association’s denial of consent to the wall was unfair and discriminatory because Association had permitted other owners to build walls in their front yards. Although neither of these defenses had been raised by Owner in the trial court, the appellate court did consider them.

Regarding the equitable estoppel argument, the appellate court stated that for an estoppel to apply, one party has to intentionally mislead another party to do something injurious to themselves that they otherwise would not have done, and that the party’s

reliance on the misleading information or conduct must have been reasonable. The appellate court found that Owner's alleged reliance on what she believed was a conditional approval to build the wall in the front yard of her property so long as it did not include stucco was not reasonable.

With regard to Owner's claims that Association treated her unfairly and discriminated against her by allowing other owners in the community to construct walls in their front yards, the appellate court stated that the trial court correctly determined that the other walls referred to by Owner bore no similarity to the wall that Owner constructed.

In affirming the trial court's decision, the appellate court stated that the evidence had showed that Association had properly followed its ordinary procedures in reviewing and partially denying Owner's application and in attempting to enforce its decision, and Owner had failed to establish facts to support her affirmative defenses.

Unpublished California Appellate Court decision (June 9, 2022).

See case decision: [Orangecrest Country Cmty. Assn v. Burns](#)