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CALIF. STATE BAR NO. 61561

Attorney for
Gerald Del Colliano
Krista Del Colliano

DEL COLLIANO) ADR PROCESS
)
V) REQUEST FOR RESOLUTION
)
PALASAIR HOMEOWNERS')
ASSOCIATION)
_____)

Homeowners, Gerard Del Colliano and Krista Del Colliano, (herein Del Colliano) who own the single family residence located at 16163 Anoka Drive, Pacific Palisades, California (herein 16163 Anoka) submit herewith by and through their attorney, Terrance P. Huber, Esq. their "Request for Resolution" pursuant to Section 5935 of the California Civil Code.

The Respondent is the Palasair Homeowners Association, a California Non-Profit Corporation, (herein Palisair HOA) the CEO of which is Lawrence Friedman whose address is 1157 Las Pulgas Place, Pacific Palisades, California. 90272.

The basis for the demand is the dispute resolution and enforcement sections of the Civil Code relating to Homeowners Associations commencing with Section 5850

1 thereof. Specifically, this Request for Resolution is submitted pursuant to the terms of
2 Section 5935 of the Civil Code.
3

4 A. Brief Description of the Dispute:

5 1. On or about October 21, 2013, Del Colliano submitted through their architect,
6 Bobby Rees of Rees Studios, an application for variance for the construction of a partial
7 second story upon the single family home which they had recently purchased at 16163
8 Anoka. Submitted with the Application were architectural plans for the project
9 consisting of seven (7) pages of calculations and specific plans. A true and correct copy
10 (reduced) of such architectural drawings is attached as Exhibit A.
11

12 2. The proposed second story addition over an existing first floor was proposed
13 for the south western portion of 16163 Anoka to be constructed over and within several
14 feet of the existing western roof line of the structure.
15

16 3. On or about November 23, 2013, a meeting was held at the residence of one
17 of the Board Members, Hal Erdley, to consider the Application and that meeting was
18 attended by Steven Di Saia, the Plans Committee Chairman, Hal Erdley, Board Member,
19 Margye Baumgartner, the owner of the westerly contiguous residence, located at 1100
20 Las Lomas Drive and Dennis Mendel the owner of a residence (16160 Anoka) directly
21 across the street and south of 16163 Anoka. It was also attended by Jerry Del Colliano,
22 Terrance P. Huber, Esq. and Andrew Galambos from the office of Bobby Rees.
23
24

25 4. At the meeting on 11/ 23/14 there was discussion about the nature of the
26 proposed addition, the location of it, the design of it and the construction process in
27 general.
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2 5. At such meeting, Mr. Del Colliano spoke directly with Ms. Baumgartner
3 regarding certain proposals to work with her to establish privacy, fencing and vegetation
4 between the two properties and Mr. Del Colliano also spoke to those at the meeting
5 about the residence northwest of 16163 Anoka (1120 Las Lomas) owned by the Schultz
6 Family.

7
8 6. After the meeting not much occurred for the next four weeks, except that the
9 Homeowners' Association decided that among its responsibilities in the context of a
10 proposed addition such as this, they would be required to obtain an opinion of a realtor
11 to determine the potential effect on value of homes in the Palisair tract of homes.

12 During that period the HOA Board apparently made arrangements with Ken Kirschner an
13 Appraiser, who viewed the property and did give an opinion, of sorts, regarding his
14 observations. A true and correct copy of Mr. Kirschner's letter opinion dated January
15 15, 2014 is attached as Exhibit B.

16
17 7. Mr. Kirschner indicated in his opinion that he felt that it would "... in fact
18 impact the property value for 1100 Las Lomas..."(the Baumgartner home) if the addition
19 were constructed as planned. Mr. Kirschner did not indicate whether that impact would
20 be positive, negative or neutral. In addition, Mr. Kirschner in his opinion indicated that
21 he was not in a position to give any opinion regarding the potential monetary effect on
22 value, resulting from the construction of the proposed addition, because "Determining
23 specific value impact requires considerable research and this task was beyond the scope
24 of what I was asked to perform." In other words, Mr. Kirschner (the only qualified
25 professional giving any opinion) rendered no opinion (because he wasn't asked to) on
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1 any monetary impact on the Baumgartner home as a result of the construction of the
2 proposed addition.
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4 8. A Meeting was arranged for December 21, 2013, which was attended by
5 certain Board Members and Terrance P. Huber to personally view the potential effect on
6 the construction of the proposed addition. Prior to the December 21, 2013 meeting Del
7 Colliano had constructed "story poles" on the roof of 16163 Anoka to define the borders
8 of the proposed addition and those story poles existed at the time that the
9 Homeowners' Board Members and Terrance P. Huber visited the Schultz home and the
10 Baumgartner home to view the story poles from both of those locations.
11

12 9. During the process where the Board was considering the propriety of the
13 proposed addition, the Board heard from residents David and Rachael Schultz and
14 Margye Baumgartner. Mr. & Mrs. Schultz objected to the location of the addition and
15 Ms. Baumgartner raised certain concerns regarding privacy and light.
16

17 10. Mr. Del Colliano had previously mentioned his desire, at his expense, to
18 work with the Baumgartner privacy and light concerns during this process. The Kirschner
19 opinion contained among other things, a creative reference to a "dark house situation"
20 based upon his observations of the story poles at the location when he viewed the
21 Baumgartner residence. Mr. Kirschner did not elaborate on that creative reference.
22

23 11. At a subsequent meeting on the evening of February 17, 2014 at the
24 residence of Lawrence Friedman, Bobby Rees, the Del Colliano Architect, presented to
25 seven Board Members (two were absent) further explanation of the proposed addition,
26 a visual demonstration with additional plans of the impropriety architecturally of placing
27
28

1 the proposed addition over the roof of the garage as some Homeowners had suggested
2
3 and also made a very specific presentation regarding the angle and azimuth of the sun
4 at various times of the year demonstrating why the Del Colliano addition would have
5 little or no impact upon the Baumgartner residence in terms of the availability of light.
6 The Baumgartner property at its eastern boundary has several large untrimmed trees
7
8 which block the light to the property and also there are other houses along Anoka Drive
9 (most importantly the large two story structure of recent vintage, - approval of HOA
10 Board required and obviously given - located at 16157 Anoka Drive) which until mid-
11 morning every morning, would block the sun from both the Del Colliano residence and
12 the Baumgartner residence. The "dark house" notion ascribed to the proposed Del
13 Colliano addition simply doesn't survive the analysis of the sun location and its impact
14 upon the properties. In addition to that, the Baumgartner residence is located at the
15 lower end of a hill, which slopes down to her property from east to west, a hill which the
16 sun would have to rise above every morning, after sunrise, and which until mid-morning
17 simply could not physically provide direct light to the Baumgartner property for the
18 reasons indicated.
19
20

21 12. The dispute exists regarding the interpretation of certain provisions of the
22 Palisair Homeowners' Association "Third Modification of Restrictions for Tracts 15944,
23 15948 and 19890". Specifically, the dispute surrounds the interpretation of Article III
24 Section 1, which is reproduced in Exhibit C, and prominent in which are the terms
25 "unreasonably obstruct" and "unreasonably diminish". In addition, Article III, Section 9
26 contains the provisions, set forth in Exhibit C, which again include the "unreasonably
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obstruct” and “unreasonably diminish” with reference to the nature of the view from any other land in this or an adjoining tract. It is only upon a finding made by the Tract Committee that the nature or quality of view is unreasonably diminished or unreasonably obstructed, that any negative action can be taken under the terms of the enabling document, by the Homeowners’ Board. That provision is also found in the 4th paragraph Article III, Section 9 (reproduced in Exhibit C) of the enabling document.

13. While the Tract Committee has discretion to consider such applications, such discretion must be exercised “... in good faith, non-arbitrarily and consistent with the Restrictions and applicable governing laws”. Article I, Section 1 of the CC&R’s.

14. Further, the Tract Committee is instructed under Article IV, Section 1, to represent the interest of “all land owners (emphasis added) of the Tract and in good faith (emphasis added) shall execute, interpret and enforce these restrictions for the benefit of the Tract and all land owners (emphasis added) within the purpose, spirit, meaning and intent thereof.”

15. Finally, there is found at Article IV, Section 2, (reproduced in Exhibit C) certain language, which once again contains the phrases “unreasonably obstruct” and “unreasonably diminish”. Presumably, this latter provision Article IV, Section 2, prompted the Homeowners’ Board to inquire into whether or not the value of land of the Tract, would be lowered by any proposed addition.

16. The Homeowners’ Board insisted upon obtaining an opinion of effect on value and further delayed the decision in this matter after an “effect on value” opinion was rendered (or more precisely, not rendered) by Mr. Kirschner, who in his opinion

1 letter opined as follows: "Determining specific value impact requires considerable
2 research and this task was beyond the scope of what I was asked to perform." Stated
3 somewhat differently, the Board delayed to obtain an opinion regarding effect upon
4 value and instructed their appraiser not to spend the time or money involved to
5 determine the effect on value. What then is the dispute? The dispute is whether or not
6 the proposed addition will have an unreasonable effect on value of surrounding
7 properties, and it will not:
8

9
10 1. Michael Edlen, a prominent realtor in the Pacific Palisades area, has recently
11 published two pieces in the Pali Post indicating that properties (particularly properties in
12 the less than two million dollar range) increased more than 15% in value over the 12
13 months of 2013.
14

15 2. Mr. & Mrs. Del Colliano recently paid approximately \$781.00 per square foot
16 for a 2000 square foot home at 16163 notwithstanding the fact that immediately to its
17 east is an enormous two story residence (obviously of fairly recent vintage) which was
18 previously approved by the Homeowners' Association and which until very late in the
19 morning, blocks the light to Anoka.
20

21 3. The Del Colliano's in their attempt at purchasing the 16163 property had
22 difficulty with the prior owners, who during the escrow, apparently obtained offers well
23 in excess of \$100,000 more than the Del Colliano offer. The Del Colliano offer was well
24 in excess of \$100,000 above the asking price. The idea therefore that this proposed
25 structure would have any effect on the value of a property, such as the Baumgartner
26 residence, is not borne out by the facts, nor by any evidence presented by the Board.
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2 4. In addition, the light issue was more than adequately addressed by Mr. Rees,
3 in his presentation to the Homeowners Board on February 17th, in effect demonstrating
4 that because of the angle of the sun and its movement during various times of the year,
5 that there would be little if any effect upon the 1100 Las Lomas property by reason of
6 the construction of the proposed addition, at 16163 Anoka, immediately to the east of
7 the Baumgartner residence. Moreover, the Baumgartner property currently contains
8 large untrimmed trees which block light to the Baumgartner property.
9

10 Dispute Resolution:

11 The Homeowners' Board is required by §5905 of the California Civil Code to have a "fair
12 reasonable and expeditious" procedure in place to resolve internal disputes.

13
14 - It is inherently unfair to consider the needs and wants of long time
15 homeowners to the exclusion of newer homeowners.

16
17 - It is unfair to discriminate against newer homeowners because such newer
18 homeowners involved their lawyer in the process, as has been admitted to by Board
19 Members.

20
21 - A Board which delays a resolution to obtain an opinion regarding effect on
22 value and then instructs the expert not to do the necessary work to opine regarding
23 effect on value is inherently unfair and unreasonable.

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25 - A Board which makes its decision based upon baseless concerns and inaccurate
26 statements by potentially affected homeowners is acting unreasonably and
27 discriminately.
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- A Board which makes a decision (Del Colliano has been advised telephonically that a negative decision was made on February 9th) and delays to consider new evidence and then then further delays after the meeting at which new evidence was presented is not acting reasonably. No formal written response has ever been given by the Board which would necessarily include the reasons for such response.

- A Board which takes four months to consider such application without making a formal decision is not acting fairly or reasonably and certainly not acting expeditiously. The Del Colliano homeowners hereby request therefore the conduct of Alternative Dispute Resolution required by the Civil Code and inform the responding party Palisair Homeowners' Association a California Non-Profit Corporation that it (Palisair) has 30-days after receipt of this request to respond – to agree upon Alternative Dispute Resolution.

Relief Request:

The Relief Requested is the issuance by a neutral of a mandatory injunction and instruction requiring the Palisair Homeowners' Board to follow the terms and conditions of its enabling document and approve the proposed addition, as no credible evidence has been presented of its negative impact on value of properties and/or its negative impact upon light otherwise available to the Baumgartner or the Schultz residences. In addition the Del Colliano Homeowners' request attorneys' fees for having been represented in this process and the reimbursement of such costs, as are appropriate, to be presented at the time of the neutral evaluation.

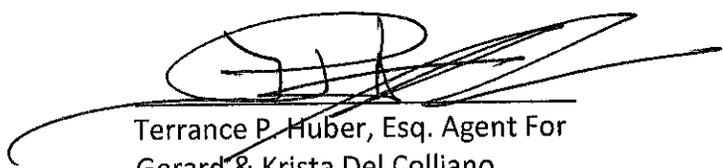
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Proposal For Neutrals:

The Del Colliano homeowners propose that the matter be submitted to ADR pursuant to the rules and provisions of the Alternative Resolution Center in Century City.

Date: February 21, 2014



Terrance P. Huber, Esq. Agent For
Gerard & Krista Del Colliano