



Diana Ungerleider <dianaunger3@gmail.com>

Fwd: HOA letter seeking approval for landscaping plan

6 messages

David Schultz <DSchultz@polsinelli.com>

Sat, Mar 19, 2016 at 11:52 AM

To: Francine Kirkpatrick <DrFKirk@verizon.net>, Diana Ungerleider <dianaunger3@gmail.com>, Miriam Schulman <miriamschulman@hotmail.com>, Roger Broderick <chaselaw@me.com>, Suzanne Weisberg <sjw@sjwlegal.com>, Howard Weisberg <hlweisberg0@gmail.com>
Cc: "Marc Rohatner (HOA)" <mrohatiner@wrslawyers.com>

Board--attached below are enclosures provided by Ball's attorney along with his request that we consider and vote upon a tree planting proposal at the next monthly meeting on 3/29. I relayed to our attorney, Marc Rohatiner, the discussions we has after the failed mediation and the serious concerns of the board raised by homeowners continually threatening litigation.

At this point, given the current dispute and the fact it is in the posture of a claim being defended by our insurance company and Mr. Rohatiner, I think that we should do four things.

First, before any vote on the tree plan, I would request that the board be provided an advice opinion letter from Mr. Rohatiner concerning the tree plan proposal and final approval on the Afifi property. In light of the posture of the claim and it being tendered to the insurance carrier for defense and indemnity, I would think that the carrier would want this to occur. Perhaps Marc can advise if he would have enough time to prepare an opinion letter sufficiently in advance of the 3/29 meeting or if he will need more time such that any meeting would have to be briefly continued.

Second, I think it would be wise and appropriate for Marc to advise Mr. Afifi that the Balls have formally submitted a tree plan proposal and forward the attached materials, after of course advising our insurance carrier. I would imagine that Mr. Afifi would then request that final approval be granted for his home construction. As set forth in the Ball attorney's letter, he believes these issues are related.

Third, Marc suggested in my call with him that, in advance of any vote on final approval of the Afifi plans that we have our architect re-review the plans to determine if there are any CC&R issues that would require a request for a variance.

Fourth, I think we should discuss these issues and the broader one about whether board members or the HOA members want the board to continue volunteering/deciding contested matters when we plan to informally meet next on weds night at 7 pm for CC&R task force matters. Perhaps the day after we do that, it would be wise to set up a conference call with Marc so that we can discuss an agree on a protocol to move forward. I could set up the call with a dial in number for Marc and others to participate.

Thanks, Dave.

Sent from my iPhone

Begin forwarded message:

From: "Gregory J. Aldisert" <GAldisert@kwikalaw.com>

To: "David Schultz" <DSchultz@Polsinelli.com>

Cc: "Marc Rohatiner (mrohatiner@wrslawyers.com)" <mrohatiner@wrslawyers.com>

Subject: HOA letter seeking approval for landscaping plan

Hi David,

Attached is a letter to the Palisair HOA asking for approval of the Balls' landscaping plan at the HOA meeting on March 29, 2016. I have also attached 1) a copy of the landscaping plan which is set forth in my April 10, 2015 letter with the enclosures, and 2) the Naomi Langer Studios landscape model showing the views from each property with the new trees. I request that you circulate the letter and the accompanying materials to the other Palisair board members.

Best regards,

Greg

Gregory J. Aldisert | Kinsella Weitzman Iser Kump & Aldisert, LLP
808 Wilshire Boulevard, 3rd Floor
Santa Monica, CA 90401
Direct Dial: (310) 566-9866 | Direct Fax: (310) 566-9876
Email: galdisert@kwikalaw.com <<mailto:r@kwikalaw.com>>

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5 attachments

 **Site Plan-c.pdf**
1218K

 **ATT00001.htm**
1K

 **ATT00002.htm**
1K

 **HOA letter-c.pdf**
153K

 **ATT00003.htm**
1K

Howard Weisberg <hlweisberg0@gmail.com>

Sat, Mar 19, 2016 at 12:57 PM

To: David Schultz <DSchultz@polsinelli.com>

Cc: Francine Kirkpatrick <DrFKirk@verizon.net>, Diana Ungerleider <dianaunger3@gmail.com>, Miriam Schulman <miriamschulman@hotmail.com>, Roger Broderick <chaselaw@me.com>, Suzanne Weisberg <sjw@sjwlegal.com>, "Marc Rohatner (HOA)" <mrohatiner@wrslawyers.com>

Do the various attorneys and their clients understand that, under Davis Sterling, attorney fee cost recovery applies to the law suits they are threatening to file against us?

[Quoted text hidden]

Miriam Schulman <miriamschulman@hotmail.com>

Sat, Mar 19, 2016 at 3:06 PM

To: David Schultz <dschultz@polsinelli.com>, Francine Kirkpatrick <drfkirk@verizon.net>, Diana Ungerleider <dianaunger3@gmail.com>, Roger Broderick - PHOA <chaselaw@me.com>, Suzanne Weisberg <sjw@sjwlegal.com>, Howard Weisberg <hlweisberg0@gmail.com>

Cc: Marc Rohatner <mrohatiner@wrslawyers.com>

Dear David,

First of all, thank you for the hours and hours of time, effort, and thought that you have clearly spent dealing with this problem.

Second, I concur completely with your four proposals.

Miriam

Miriam Schulman
[310-413-8333](tel:310-413-8333)

Subject: Fwd: HOA letter seeking approval for landscaping plan

From: DSchultz@Polsinelli.com

To: DrFKirk@verizon.net; dianaunger3@gmail.com; miriamschulman@hotmail.com; chaselaw@me.com; sjw@sjwlegal.com; hlweisberg0@gmail.com

CC: mrohatiner@wrslawyers.com

Date: Sat, 19 Mar 2016 18:52:40 +0000

[Quoted text hidden]

--Forwarded Message Attachment--

--Forwarded Message Attachment--

--Forwarded Message Attachment--

Howard Weisberg <hlweisberg0@gmail.com>

Sun, Mar 20, 2016 at 2:23 PM

To: Miriam Schulman <miriamschulman@hotmail.com>

Cc: David Schultz <dschultz@polsinelli.com>, Francine Kirkpatrick <drfkirk@verizon.net>, Diana Ungerleider <dianaunger3@gmail.com>, Roger Broderick - PHOA <chaselaw@me.com>, Suzanne Weisberg <sjw@sjwlegal.com>, Marc Rohatiner <mrohatiner@wrslawyers.com>

Regarding **Attorneys' Fees**, see:

Civ. Code §5975

<http://www.davis-stirling.com/MainIndex/Statutes/CivilCode5975/tabid/3871/Default.aspx#axzz2CgHrcBrn>

Davis Stirling.com - Attorneys' Fees

<http://www.davis-stirling.com/tabid/1248/Default.aspx>

Spite Fence Law:

Does Ball's proposed wall of trees fit the definition of a "Spite Fence" in California law? In that ultimate source of law advice, Wikipedia, we find the following:

https://en.wikipedia.org/wiki/Spite_fence#California

In the California case of *Wilson v. Handley*, 97 Cal. App. 4th 1301 (2002), Wilson built a second story onto her log cabin. Her neighbor, Handley, did not like this addition, and retaliated. Handley planted a row of evergreen trees, parallel to the property line, that would grow some day to purposely block Wilson's view of Mt. Shasta. Wilson sued Handley for blocking her view. The California Court of Appeals ruled that trees planted parallel to a property line, to purposely block a neighbors' view, constitutes a spite fence and a private nuisance, and is illegal under California Civil Code (Section 841.4).

[Quoted text hidden]

David Schultz <DSchultz@polsinelli.com>

Mon, Mar 21, 2016 at 11:52 AM

To: "Francine Kirkpatrick (DrFKirk@verizon.net)" <DrFKirk@verizon.net>, "Diana Ungerleider (dianaunger3@gmail.com)" <dianaunger3@gmail.com>, "Miriam Schulman (miriamschulman@hotmail.com)" <miriamschulman@hotmail.com>, Roger Broderick <Chaselaw@me.com>, "Howard Weisberg (hlweisberg0@gmail.com)" <hlweisberg0@gmail.com>, Suzanne Weisberg <sjw@sjwlegal.com>

FYI. The email that I forwarded to you all on Saturday morning from my iphone, for some reason (probably data size), did not have all the attachments. This email does.

From: David Schultz
Sent: Monday, March 21, 2016 11:49 AM
To: faryan@afifilaw.com; Marc Rohatiner (mrohatiner@wrslawyers.com)
Cc: Gregory J. Aldisert (GAldisert@kwikalaw.com)
Subject: FW: HOA letter seeking approval for landscaping plan

I don't know if the email below and the attached materials were forwarded yet to Mr. Afifi, so I thought it best to do so in this email.

Thank you, Dave.

From: Gregory J. Aldisert [<mailto:GAldisert@kwikalaw.com>]
Sent: Friday, March 18, 2016 3:54 PM
To: David Schultz
Cc: Marc Rohatiner (mrohatiner@wrslawyers.com)
Subject: HOA letter seeking approval for landscaping plan

Hi David,

Attached is a letter to the Palisair HOA asking for approval of the Balls' landscaping plan at the HOA meeting on March 29, 2016. I have also attached 1) a copy of the landscaping plan which is set forth in my April 10, 2015 letter with the enclosures, and 2) the Naomi Langer Studios landscape model showing the views from each property with the new trees. I request that you circulate the letter and the accompanying materials to the other Palisair board members.

Best regards,

Greg

Gregory J. Aldisert | Kinsella Weitzman Iser Kump & Aldisert, LLP
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Email: galdisert@kwikalaw.com

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3 attachments



Site Plan-c.pdf
1218K



2016-0314 PALISAIR VIEWS-c.pdf
12661K



HOA letter-c.pdf
153K

David Schultz <DSchultz@polsinelli.com>

Thu, Mar 24, 2016 at 12:51 PM

To: "Marc Rohatiner (mrohater@wrslawyers.com)" <mrohater@wrslawyers.com>

Cc: "Francine Kirkpatrick (DrFKirk@verizon.net)" <DrFKirk@verizon.net>, "Diana Ungerleider (dianaunger3@gmail.com)" <dianaunger3@gmail.com>, "Miriam Schulman (miriamschulman@hotmail.com)" <miriamschulman@hotmail.com>, roger broderick <chaselaw@me.com>, Suzanne Weisberg <sjw@sjwlegal.com>, "Howard Weisberg (hlweisberg0@gmail.com)" <hlweisberg0@gmail.com>

Marc— After talking with the board and with you about how the board should procedurally address the issues concerning the Ball and Afifi dispute, we believe it would be best for you to send an email to them to set up a schedule.

The board agrees with you that it would be appropriate for you to set a protocol/schedule that would allow Mr. Afifi some time to respond to the letter that Mr. Ball's attorney sent and for you to then have sufficient time to provide an advice opinion letter to the board on the pending issues. Because Mr. Afifi apparently has not had time to provide a written response and has advised that he intends to do so, and you would probably need a week to assess the various positions and provide the board with your opinion, it seems impractical to consider these issues at the next meeting on March 29th. Incidentally, I just learned yesterday that the March 29th meeting had not been posted on the HOA website and still was not as of last night. Can you please send

an email today or tomorrow to Mr. Afifi and Mr. Ball to propose and set up a schedule/protocol that includes what you believe is sufficient time for (a) Mr. Afifi to respond, (b) you to provide an advice opinion letter to the board, and (c) the board to then consider all of that material in advance of a board meeting on the issues?

Because almost all of the present board members were not on the board when preliminary approval was provided by and communications were engaged in by Larry Friedman and Steve Di Saia, the board would appreciate that your advice letter discuss and attach documents that you believe are most relevant to the issues.

Thank you once again for your continued assistance and help on these issues. The board greatly appreciates and values your efforts. If you'd like to discuss, just call me any time.

Best Regards, Dave

David Schultz

Principal

dschultz@polsinelli.com

310.203.5325

2049 Century Park East, Suite 2900
Los Angeles, CA 90067

polsinelli.com



Polsinelli PC, Polsinelli LLP in California

From: David Schultz

Sent: Saturday, March 19, 2016 11:53 AM

To: Francine Kirkpatrick; Diana Ungerleider; Miriam Schulman; Roger Broderick; Suzanne Weisberg; Howard Weisberg

Cc: Marc Rohatner (HOA)

Subject: Fwd: HOA letter seeking approval for landscaping plan

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