Heritage Ranch Owners Association v. Guenther

2005 | Cited 0 times | California Court of Appeal | August 23, 2005

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Appellant Heritage Ranch Owners Association (Association) appeals from judgments entered in favor respondents John and Carole King; King Ventures; H.R. Holdings, LLC; Dan Lloyd; Charlie Richardson; Robert Schiebelhut; and Christopher Guenther. The judgments were entered after the court granted Guenther's motion for summary judgment and sustained demurrers filed by the other respondents. We affirm.

Procedural and Factual Background

The members of the Association own real property in Heritage Ranch, a common interest development in San Luis Obispo County. The rights, duties, and obligations of the individual members, the Board of Directors (Board), and the Association are described in a Declaration of Covenants, Conditions and Restrictions (CC&R's) recorded in 1972. The Association was established to operate, manage and maintain the common areas within Heritage Ranch and to enforce the CC&R's governing the use of the common areas.

Defendants Tom Dorsey, Terry Chavis, Dan Heath, Leon Mountain, John Mott, Rick Archbold were former directors or managers of the Association (collectively "employee defendants"). Defendant, the accounting firm of Glenn, Burdette, Philips & Bryson, was employed by the Association as certified public accountants to review the Association's financial reports and provide professional advice. Defendant and respondent Guenther was employed by the Association as its attorney.

Defendants and respondents John and Carole King own real property in Heritage Ranch and are in the process of developing property in Heritage Ranch through defendant and respondent King Ventures. (The Kings and King Ventures are collectively referred to as "King defendants.") Defendant and respondent H.R. Holdings is a company formed by defendants and respondents Dan Lloyd, Charlie Richardson, and John Schiebelhut. H.R. Holdings also owns real property in Heritage Ranch.

Heritage Ranch Cattle Company designed the development known as Heritage Ranch to be a private community on the shores of Lake Naciemento which, if completely built out, would have in excess of

2500 individual assessment-paying residential parcels ranging in size from large parcels in excess of 100 acres to small recreational vehicle parcels. In theory, each individual parcel would contribute to the Association's expenses of operation and be subject to assessments for the maintenance of the private roadways, launch ramps, parks, pools, and other recreational facilities to be constructed for the common use of the owners of property within Heritage Ranch.

The master CC&R's for Heritage Ranch were recorded by the Cattle Company in 1972 when the first residential subdivision was annexed into Heritage Ranch (tract 424). The CC&R's contemplate that further residential subdivisions would be annexed into and become subject to the jurisdiction of the Association. It was understood that the subdivisions annexed to the Association would eventually include in excess of 5,100 acres of open space restricted to recreational use by the Association's property owners. The Association calls this the "undeveloped natural common area" or "developer's common area obligation."

The Association alleges that upon annexing tract 424, the Cattle Company became obligated to hold 734 acres in what is now known as lot 6 of tract 720 as undeveloped natural open space common space for the benefit of the purchasers of lots in tract 424 and subsequent subdivisions. Thereafter, the Cattle Company annexed additional tracts, bringing the total number of residential lots to 1,154. During this time period, the land within lot 6 of tract 720 was available for recreational use by the purchasers of these 1,154 lots.

In 1975, the Cattle Company (a company controlled by the Heath family) lost its interest in Heritage Ranch to Six Corporation. After that, Water World Resorts (a company also controlled by the Heath family) proposed to the county to open the Association's principal roads to the public to allow public access to a waterfront resort it wanted to construct on property adjacent to lot 6 of tract 720. Six Corporation supported the plan to open the roads because it also wanted to develop a public resort with a hotel, restaurant, and marina on a portion of the undeveloped natural common area located within lot 6 of tract 720.

In 1987, Six Corporation declared bankruptcy. Diamond Benefits Life Insurance Company and American Universal Insurance Company fought to succeed to Six Corporation's interest in Heritage Ranch. The Association alleges that, while the bankruptcy proceedings were pending, Diamond Benefits, American Universal, and others interested in acquiring Six Corporation's property began to cultivate relationships with certain officers, directors, and employees of the Association who were willing to assist them in (1) relieving the new developer from the common area commitment under the master CC&R's and (2) allowing the developer to proceed with the prior plan to open the private roads to allow public access to the proposed public resorts.

In furtherance of this goal, the Association alleges that the employee defendants (Heath, Dorsey, Chavis, Mountain, Mott, and Archbold), commencing in 1992 and continuing through 2001, set about to manage the Association's affairs for the benefit of Diamond Benefits, American Universal, and

those interested in acquiring Six Corporation's property so as to render the Association financially unable to comply with its own obligation to keep the roads and other capital improvements in good repair. As a result, a new developer would have leverage in negotiation with or forcing the Association to accept the new developer's plan. Specifically, the Association alleges that these defendants made no effort to set aside the reserves required to maintain the capital improvements in and adjacent to several of the tracts in Heritage Ranch South and allowed them to deteriorate to a deplorable condition. The Association further alleges that, in furtherance of this plan, these defendants prepared and mailed to the Association and its property owners an audit report prepared by defendant accounting firm. It is alleged that the report assured the members that management was complying with the reserve fund statutes when, in fact, these defendants knew this was not true.

In 1998, Diamond Benefits acquired Six Corporation's interest in Heritage Ranch. In August of 2000, the slate of candidates endorsed by defendant Heath was elected to the Board. The Association alleges that defendants Dorsey, Chavis, Mountain and Caryn Duran (now deceased), all of whom were committed to Heath's development plan, dominated the Board. The Association alleges that in May of 2001, with the assurance that the Association's new directors would approve the plan to commercially develop lot 6 of tract 720, Schiebelhut opened escrow on behalf of a group of investors to purchase the property held by Diamond Benefits for $6.5 million.

In October of 2001, defendants Dorsey, Mountain, and Chavis were removed as members of the Board. The closing date of the Diamond Benefits escrow was then continued to December 18, 2001. At that point, Schiebelhut, Richardson, and Lloyd formed H.R. Holdings, LLC, and substituted H.R. Holdings for Schiebelhut as the buyer to take title to the Diamond Benefits' property when escrow closed.

In April of 2002, the Diamond Benefits-H.R. Holdings escrow closed. H.R. Holdings immediately sold a portion of the property it acquired from Diamond Benefits to the King defendants for $4.9 million. H.R. Holdings also transferred its interest in lot 6 of tract 720 to the King defendants.

In the meantime, the composition of the Board of Directors of the Association changed. The new Board authorized an independent study that revealed the Association was severely deficient in the amount of funds on reserve to repair and restore the roads in Heritage Ranch and other common area improvements. The new Board disclosed the Association's precarious financial position to the existing property owners and authorized an immediate assessment in the maximum amount allowed by law so it could begin restoring the roads which were in disrepair. The Association alleges that H.R. Holdings and the King defendants knew that their plan to force a public dedication of Gateway Drive and Heritage Road (roads within Heritage Ranch) would not succeed or be enthusiastically endorsed by the Association's new Board. Accordingly, the Association alleges that H.R. Holdings, Schiebelhut, Richardson, Lloyd, and the King defendants had to change their strategy. It alleges that these defendants determined that the property they acquired from Diamond Benefits was not subject to the master CC&R's and could be used for any purpose permitted by the county.

Heritage Ranch Owners Association v. Guenther

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In October of 2002, the King defendants disclosed that they and Heath intended to use a portion of the undeveloped natural common area contained in lot 6 of tract 720 for the development of a public golf course and resort complex that was to be located for the most part, on Heath's adjacent Water World property. The King defendants and H.R. Holdings took other actions inconsistent with the use of the property as an undeveloped common area, including a planned development of a private waterfront condominium and time share facilities with private roads, pools, and boat slips on the only portion of the undeveloped natural common area left in lot 6 of tract 720 that was suitable to provide common area access, parking, and boat slips for the Association's existing property owners.

In August of 2003, the Association filed a first amended complaint against the employee defendants (Tom Dorsey, Terry Chavis, Leon Mountain, Dan Heath, Rick Archbold, John Mott), the accounting firm of Glenn, Burdette, Philips & Bryson, the King defendants (John and Carole King and King Ventures), H.R. Holdings, and the Association's former attorney, Christopher Guenther. H.R. Holdings and the King defendants subsequently demurred to the amended complaint. The trial court sustained their demurrers with leave to amend and the Association filed a second amended complaint (SAC) on January 9, 2004. The SAC added the principals in H.R. Holdings, i.e., Schiebelhut, Lloyd, and Richardson. The SAC alleges seven causes of action against the various defendants as follows:

In the first cause of action for declaratory relief against the King defendants, H.R. Holdings, Heath, and Dorsey, the Association alleges that an actual controversy exists as to whether these defendants can develop lot 6 of tract 720, lots 51 and 52 of tract 1910, and lot 5 of tract 1094-1. The Association seeks a declaration as to whether these lots are subject to the restrictions imposed on undeveloped natural common areas by the master CC&R's and to an equitable servitude restricting the lots to recreational use by members of the Association. The defendants claim they may use the properties for any purpose allowed by the county.

In the second cause of action for injunctive relief and the imposition of a constructive trust, the Association seeks to enjoin the King defendants, H.R. Holdings, Heath, and Dorsey from proceeding with the development of lot 6 of tract 720, and grazing livestock or planting crops on that parcel. The Association requests the court order these defendants to convey title to these properties to the Association.

In the third cause of action for breach of fiduciary duty against the employee defendants, the Association seeks damages based on allegations that these defendants breached fiduciary duties owed to the Association and its members by, among other things, failing to repair and maintain the common areas within the development, and failing to maintain adequate budgets for the operation of the Association. In the related fifth cause of action against the accounting firm of Glenn, Burdette, Philips & Bryson, the Association seeks damages for fraud based on the firm's failure to prepare accurate audit reports revealing the status of the Association's reserve funds.

In the fourth cause of action against the King defendants, H.R. Holdings, Heath, Dorsey, Schiebelhut, Richardson, and Lloyd, the Association seeks damages based on a conspiracy to defraud. The Association alleges that these defendants conspired with the Association's prior Board to conceal and undermine the financial condition of the Association in order to obtain the Association's approval or acceptance of their development plans. In the related sixth cause of action against these defendants, the Association seeks damages for an alleged violation of RICO (the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c)). In particular, the Association alleges that these defendants used the United States mail to distribute misleading audit reports and budget information concealing the true status of the Association's reserve funds, all in furtherance of their fraudulent scheme to bolster their development plans.

Finally, in the seventh cause of action against Guenther, the Association's former attorney, the Association seeks damages for professional negligence. The Association alleges that Guenther was aware the former Board was not complying with the reserve funding and reporting requirements of the Davis-Stirling Common Interest Development Act (the "Davis-Stirling Act"), and failed to exercise due care for the Association's protection by requiring a disclosure of the reserve fund transactions and development plans of the defendants.

In February of 2004, H.R. Holdings, Schielbelhut, Lloyd, Richardson, and the King defendants demurred to the SAC, arguing that the language of the master CC&R's did not impose an obligation to convey 5,100 acres of open space to the Association or give the Association any approval rights over the subject lots. In March of 2004, H.R. Holdings, Schiebelhut, Lloyd, Richardson, and the King defendants moved to strike the SAC as a SLAPP suit pursuant to Code of Civil Procedure section 425.16. Their motion automatically stayed all discovery. These defendants contended that the Association had filed its suit to interfere with the developers' rights to petition the county for a general plan amendment to allow the construction of the proposed King Ventures-Dan Heath resort development.

In April of 2004, the trial court conducted a hearing on the demurrers and motions to strike. As for the first and second causes of action, the demurring parties argued that the CC&R's did not give the Association the right to regulate the development plans for the area, and to approve future subdivisions. Rather, they contended the county has that right. They further argued there is nothing in the CC&R's to prevent them from using undeveloped natural common areas for subsequent development as long as they remained consistent with the county's original development plan of 5,100 acres of open space.

As for the fourth and sixth causes of action, the demurring parties argued that the allegations also stand or fall on whether the Association has the power to approve or disapprove their development plans.

The Association countered that the undeveloped natural common area was annexed into the

Association by recording the tract map for tract 720 in 1982. It argued that if the developers were correct, the developers will be denying access to the waterfront area of lot 6 of tract 720 to existing property owners.

The trial court denied the motions to strike without prejudice, reasoning that the moving defendants had not met their burden of demonstrating that the declaratory relief, injunctive relief, conspiracy, and RICO causes of action inhibited their right to petition or free speech. The court sustained the demurrers to the declaratory and injunctive relief causes of action for lack of certainty and failure to state a claim. The court concluded:

"[T]he Association basically admits the CC&Rs on their face do not show that a particular portion of the Heritage Ranch property was designated as common space. . . . Rather, the Association argues that due to a series of actions taking place over many years as the subdivision grew, the CC&Rs should be interpreted to require that certain parcels, such as lot 6 of tract 720, remain as common space. . . . This argument indicates that whether defendants are restricted by the CC&Rs in developing their property cannot be resolved on demurrer. [¶] The problem remains, however, that if the CC&Rs themselves do not establish the Association's right of access to certain parcels for recreational purposes, then the SAC does not clearly set forth the basis for the Association's theory. [¶] The Court expresses a significant concern that the Association may not be able to adequately cure this defect in the pleading. Nonetheless, it should be allowed another opportunity to do. The demurrer is sustained again for lack of certainty and failure to state a claim."

The court sustained the demurrers to the fourth and six causes of action for conspiracy to defraud and violation of RICO without leave to amend. The court reasoned that these claims had not been pleaded with particularity and, alternatively, the Association lacked standing to pursue these claims in a representative capacity under former Code of Civil Procedure section 383 (now Civil Code section 1368.3). The court reasoned:

"[H.R.] Holdings demurs on the ground the CC&Rs . . . themselves do not support the Association's claim that it has any control over defendants' development plans. Here again, the SAC does not clearly set forth the basis for relief because it does not show how defendants' alleged scheme was designed to undermine the Association's rights under the CC&Rs. Moreover . . . the SAC is conclusory because it alleges a scheme and agreement dating to 1994, but alleges that Schiebelhut was not involved until May 2001 and Holdings was not formed until October 2001. Thus, the basis for the claims against these defendants is unclear and the fraud claim has not been pleaded with the requisite particularity. [¶] . . . [¶]

"Section 383 most clearly applies when a homeowner's association pursues a claim for construction defects. [Citation.] The SAC alleges that defendants' fraudulent conduct affected the property rights of the Association's members in some vague, unspecified manner, and affected the Association's reserve fund. This conduct does not fall within the scope of § 383."

The Association then gave notice of its election to stand on the allegations of its first and second causes of action and moved for entry of a judgment of dismissal in favor of the demurring parties. The court granted the motion and entered a judgment of dismissal on the SAC on the first, second, fourth and sixth causes of action.[1]

In the meantime, Guenther moved for summary judgment as to the seventh and only cause of action alleged against him. His motion was based on his own expert declaration which gave detailed reasons for his opinion that he complied with the applicable standard of care in acting as the Association's attorney between 2000 and 2002, and that his legal advice had not caused or contributed to the Association's alleged injuries.

The trial court granted Guenther's motion, agreeing that there were no triable issues as to whether he had breached the applicable standard of care or causation.

Discussion

I. First and Second Causes of Action for Declaratory and Injunctive Relief

The Association contends that it is entitled to a judicial declaration of its rights vis-...-vis the developers under the 1972 master CC&R's regarding the portions of Heritage Ranch that must be (1) held in trust and subject to equitable servitudes for the Association's benefit and (2) deeded to the Association as undeveloped natural common areas. It further argues that it is entitled to an injunction prohibiting the developers from exploiting such property in any fashion not allowed by the 1972 CC&R's. The Association argues the court should not have, in the context of ruling on a demurrer, accepted respondents' construction of the 1972 master CC&R's and assumed the plain meaning of its terms prevailed. The Association's contentions are unavailing.

On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment to determine whether the complaint states a cause of action as a matter of law. We accept as true all material facts properly pled and those facts that may be implied or inferred from those expressly alleged. (Montclair Parkowners Assn. v. City of Montclair (1999) 76 Cal.App.4th 784, 790.) If the complaint is determined to be defective following our de novo review, the trial court's denial of leave to amend is reviewed for abuse of discretion. Where a party voluntarily dismisses its causes of action, without amending its complaint if allowed by the court, it is presumed the party has stated as strong a case as possible. The judgment of dismissal in that event must be affirmed if the unamended complaint is objectionable on any ground raised in the demurrer. (Soliz v. Williams (1999) 74 Cal.App.4th 577, 585.)

Here, the Association's ability to state a claim for declaratory or injunctive relief turns on the question whether lot 6 of tract 720 is subject to the restrictions imposed on undeveloped natural common areas by the master CC&R's and to an equitable servitude restricting the property to

recreational use by members of the Association. The Association attached the master CC&R's to the SAC as an exhibit and incorporated its provisions by reference. Courts have held that "to the extent the factual allegations conflict with the content of the exhibits to the complaint, [the court will] rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits." (Barnett v. Fireman's Fund Ins. Co. (2001) 90 Cal.App.4th 500, 505.) The CC&R's do not impose restrictions on lot 6 of tract 720 as the Association alleges or impose an open space requirement. The CC&R's are not reasonably susceptible to the meaning alleged by the Association in the SAC.

Preliminarily, we observe that, notwithstanding the Association's allegations, there is no language in the master CC&R's from which to imply any obligation on the part of the developer to maintain at least 5,100 acres of open space in Heritage Ranch. It is undisputed that, in 1972, the San Luis Obispo County Board of Supervisors adopted a specific plan for Heritage Ranch. This plan is referred to as the "development plan" in the CC&R's.[2] The county's specific plan creates and regulates the developer's obligation to maintain 5,100 acres of open space at Heritage Ranch, not the CC&R's. The CC&R's expressly govern only those properties that have been annexed to the Heritage Ranch Planned Community. The Association does not allege that lot 6 of tract 720 has been annexed to it.

On their face, the CC&R's vest the developer with broad discretion to develop the property pursuant to the county's general plan. The amount of common area open space is determined by the county and is set forth in each subdivision map approved by the county. Article II of the CC&R's sets forth the methods by which real property is annexed to the Heritage Ranch Planned Community and becomes subject to the Association's jurisdiction. Under this article, the developer may, "in its sole discretion," annex future subdivisions to the Heritage Ranch Planned Community without the approval of the Association, the Association may annex property not owned by the developer with the permission of two-thirds majority of its voting members, and the Association may merge with another association to join other property under its jurisdiction. There is no provision for any implied right to annexation of any particular parcel, and there is no requirement that the developer annex any subsequent residential subdivisions.

Finally, the CC&R's contain no provision requiring the developer to obtain approval of its development plans by the Association for properties not expressly within the Association's jurisdiction. In fact, the CC&R's, in article XII, section 8, expressly prohibit the Association from bringing an action against the developer "on account of any modification, amendment, deletion or other change from or to Declarant's Development Plan, or for the Declarant's failure to complete any particular item contained on its Development Plan," with the exception of recreational facilities the developer has advertised that it would build. Rather, the Association's remedy is to participate in the public process in connection with the county's consideration and approval of development plans.

The trial court did not err by accepting the demurring parties' construction of the CC&R's and rejecting the Association's interpretation in the context of ruling on a demurrer. "It is the general

rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. . . . The meaning attributed to the writing must be one to which it is reasonably susceptible . . . , and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction as to its nature or as to the purpose intended by the parties to be attained by it, the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." (Connell v. Zaid (1969) 268 Cal.App.2d 788, 794-795, citations & italics omitted; Harris v. Rudin, Richman & Appel (1999) 74 Cal.App.4th 299, 308.) The Association did not argue below that the CC&R's are ambiguous, and nothing on the face of the CC&R's supports the construction suggested by the Association. The court properly ruled that the Association failed to state claims for declaratory and injunctive relief.

II. Fourth and Sixth Causes of Action for Conspiracy to Defraud and Violation of RICO

The Association contends the trial court erred in sustaining the demurrers to its conspiracy to defraud and RICO claims. It argues that it alleged with sufficient particularity the required elements of each claim. We disagree.

To plead a conspiracy theory, the complaint must allege (1) the formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) damage resulting from such act or acts. (Younan v. Equifax Inc. (1980) 111 Cal.App.3d 498, 511, fn. 9.) The elements of a RICO claim require the plaintiff to plead that the defendant caused injury to the plaintiff's business or property by engaging in a pattern of racketeering activity in connection with an enterprise that affects interstate commerce. (18 U.S.C. 1962(b) & (c); Gervase v. Superior Court (1995) 31 Cal.App.4th 1218, 1232.)

Here, the conspiracy and RICO claims were essentially based on the allegation that the named defendants concurred in a tortious scheme with the employee defendants to damage the Association's common area property in order to render the Association vulnerable to the developers' demands for the Association's approval of its development plans. In view of our conclusion above that the CC&R's do not support the Association's claim that it must approve the development plans for lot 6 of tract 720, the SAC does not clearly set forth the basis of a fraud or RICO claim.

Moreover, as the trial court observed, although the Association alleged that the developers joined a conspiracy and used the United States mail to distribute erroneous financial information as far back as 1994, it also alleged that H.R. Holdings, Schiebelhut, Richardson, Lloyd, and the King defendants were not involved in the purchase of lot 6 of tract 720 until 2001. No facts are alleged identifying how these defendants participated in a conspiracy, when they joined it, or what wrongful act they committed. In short, the Association's allegations fall short of the particularity required for pleading fraud actions. (See, e.g., Committee on Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 216 [every element of the fraud must be alleged factually and specifically].)

III. Seventh Cause of Action for Professional Negligence

The Association contends the trial court erred in granting Guenther's motion for summary judgment on the seventh cause of action for legal malpractice. It argues that genuine issues of material fact remain in dispute on the elements of a breach of the duty owed by Guenther and causation. It argues the standard of care was undisputed and it was not required to present an expert declaration in opposition to the summary judgment motion. We disagree.

We independently review the trial court's decision to grant summary judgment, applying the same legal standard as the trial court. (Paz v. State of California (2000) 22 Cal.4th 550, 557.) A defendant moving for summary judgment has the burden to establish a complete defense to the plaintiff's cause of action, or to show that one or more elements of the cause of action cannot be established. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 849-850, 853.) Once the defendant has done so, the burden shifts to the plaintiff to present admissible evidence that a triable issue of material fact exists. (Id. at pp. 850, 855-856; Code Civ. Proc., § 437c, subd. (p)(2).) We affirm the summary judgment if there are no material issues of fact to be determined at trial and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

The elements of a legal malpractice action are the same as for any professional negligence action: (1) duty of the attorney to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence. (Dawson v. Toledano (2003) 109 Cal.App.4th 387, 396.) On the element of causation, the Association must offer evidence that a more favorable result would have been obtained but for the attorney's negligence. (Viner v. Sweet (2003) 30 Cal.4th 1232, 1240-1241.)

Guenther was the Association's attorney for the Board from June of 2000 to September of 2002. The SAC alleges that certain of the legal advice he gave was erroneous and on other occasions he refused to give advice. Specifically, the Association alleges that Guenther knew or should have known the Board was not complying with the reserve funding and reporting requirements of the Davis-Stirling Act. (Civ. Code, §§ 1350 et seq.) The Association alleges that Guenther knew that the proposal to use reserve funds to relocate the Association's office and community pool would result in a use of reserve funds for a purpose not permitted by the Act. The Association alleges that Guenther breached his fiduciary duty by endorsing the employee defendants' handling of reserve fund transactions and by advocating their interests over the Association's. The Association alleges that, as a result of his breach of duty, the breach of duty and fraud committed by the employee defendants went undetected until April of 2002, and was a contributing legal cause of the increased costs the Association now faces to repair Heritage Park and the roads in Heritage Ranch South, and the loss of use of recreational facilities in Heritage Park. The Association also alleges that Guenther refused to give advice when asked to do so by Linda Richey, a former Board member. Finally, the Association alleges that Guenther's actions deprived the Association of a lawfully functioning and informed Board.

The SAC also makes several allegations that Guenther (1) knew prospective purchasers had opened escrow and had discussed development plans with some, but not all, of the Board's directors; (2) knew the plans had not been discussed at a pubic meeting or otherwise reported to the Association's members; (3) knew that defendants Heath, Dorsey, Chavis, Mountain and the King defendants took the position that the Board had complete authority to negotiate with prospective purchasers and approve development plans on behalf of the Association without first revealing these plans to the members of the Association; and (4) failed to exercise due care for the Association's protection by concurring in this erroneous position and not requiring disclosure of the plans. The Association alleges, however, that when Guenther gave this advice, he was unaware of the developers' plans to open for commercial exploitation all undeveloped natural common area in Heritage Ranch. The Association alleges that if discovery revealed otherwise, it would seek leave to amend to add that Guenther "had to know this would require approval of 75% of the existing property owners." The Association alleges that by April of 2002, the escrow opened by the prospective purchasers had closed without objection, and the purchasers proceeded with their plan to appropriate all of the undeveloped natural common area to the detriment of the Association.

In support of his motion for summary judgment, Guenther submitted his own declaration explaining the limited nature of his representation of the Board and qualifying himself as an expert in representing common interest community associations. His declaration stated that he has practiced law in California for over 26 years in the areas of common interest community associations, real property law, contract law, business law, and civil litigation. He explained that he was retained in June of 2000 by the Association to advise the Board, be responsive to Board inquiries, and attend meetings at the Board's request. He stated the Board was clear that he was not to provide advice to individual members of the Board unless authorized to do so by a majority of the Board, and he did not act as legal counsel for the individual members of the association. On one occasion, director Linda Richey asked him for advice and he was advised by three of the five Board members not to answer her individual request. He explained that he was not to mediate disputes between the Board members.

Guenther stated that he was familiar with the standard of practice as it applies to real estate law and homeowner's associations and may render expert opinions on the subject. He stated the standard of practice for an attorney advising a homeowner's association is to advise the board of their duties under the law, including the Davis-Stirling Act and related case law; to review the association's governing documents and advise on compliance with applicable laws; to provide interpretation and enforcement of governing documents; to develop and assist in the implementation of policies and procedures; and to assist in the collection of delinquent assessments. He stated that it was not part of his duties as the Association's attorney to monitor or participate in the various real estate transactions that affected the property encompassed within the Association, but would do so upon request of the Board. He stated the Board did not request his participation with respect to any resort development plans. He stated it was not part of his duties to participate in negotiations of any of the business dealings that involved the interests of the Association.

Guenther stated that he had no knowledge of any purported plan to allow the private roads of Heritage Ranch to fall into a state of disrepair such that it would force a public dedication of Gateway Drive and Heritage Road. He said he had no involvement with the preparation, review, and reconciliation of reserve funds. During 2001-2002, he defended the Association against claims that it had failed to comply with its statutory duties in the case of Ellison v. HROA (Super. Ct. San Luis Obispo County, 2002, No. CV 010963) (Ellison). During that litigation, he became aware that a reserve study was completed in 1992, but did not include a reservation of funds to complete a two-inch overlay on the roads. He advised the Board to correct this and the Board authorized a new reserve study at their next special meeting. He had no knowledge that the Board improperly handled reserve funds. He also stated that most of the discussion regarding the proposed relocation and expansion of the office facility and swimming pool occurred in 1999 before he was the Association's attorney. When asked for his opinion as to whether the issue required a membership vote, he concurred in the Board's decision to seek membership approval. This issue was on the August 2001 ballot and was voted down.

Guenther added that he had no knowledge of any plan to convert the undeveloped natural common area lands to private use, of a Heath-Diamond Benefits Resort development plan, of any discussions of any development plans with some but not all directors, or of any plan to make the Heritage Ranch roads public to facilitate any resort plan. Finally, Guenther added that he never advised the Board they had complete authority to negotiate with and approve plans of prospective purchasers on behalf of the Association without revealing the negotiations or plans to the members until the plans had been approved by the Board. He stated the Board does not have that authority. He opined that his legal representation provided to the Board met the standard of care and that his legal advice did not cause or contribute to the Association's alleged injuries.

The Association opposed the motion with four supporting declarations of non-attorneys, i.e., Linda Richey, Denise Roach, Rick Maynard, and Gil Hayden. These declarations failed to rebut the expert declaration of Guenther as to the applicable standard of care or his breach of that standard. For example, Linda Richey, the Association's current general manager, served on the Board from October 1999 to August of 2001. In a 12-page declaration, she stated that she had alerted Guenther to the reserve fund improprieties shortly after he was retained in June of 2000, but he did nothing about it. She stated that after the new Board, controlled by Dorsey, Chavis, and Mountain, was seated in August of 2000, Guenther refused to discuss anything with her without their permission. Based on her declaration, the Association argued that Guenther was hired by the Association to assure that the Board followed the law and fulfilled the Association's fiduciary duties under the Davis-Stirling Act to protect and maintain the common area capital improvements and establish reserves for this purpose. The Association argued that he had a duty to investigate any breach of these fiduciary duties particularly when a majority of the directors of the Board were opposed. Richey blamed the closure of the community pool on Guenther due to his failure to investigate the concerns she expressed to him in June, July, and August of 2000, as to the use and amount of existing reserve funds.

Roach was a resident of Heritage Ranch since 1976. She had served on the Association's finance committee for several years until August of 2000 and was appointed to the Board in April of 2002. Roach's declaration presented facts suggesting that former Board members were aware (since September of 2001) that the Association would have to spend $1 million immediately and another $2.5 million over the next five years to save its roads, yet they had subsequently voted to eliminate the meager reserves that had been set aside for road restoration. She stated that depositions of the Association's office staff were taken in the Ellison litigation in an attempt to find out the amount of reserves set aside to repair common area capital improvements. She stated that, prior to the deposition of John Mott (the Association's former general manager), Guenther had insisted that the Association's yearly adjustments to the "reserve schedule" complied with the Davis-Stirling Act. Only after Mott admitted to the unfunded $1 million road restoration liability in the Ellison litigation, did Guenther finally concede that a comprehensive professional reserve study was required. She stated the Ellisons had complained that the Association's management was not providing the members with the information required to be disclosed annually by the Davis-Stirling Act. She stated that in June of 2002, the Board asked Guenther about its rights to recover the costs associated in restoring Heritage Park and other expenses from the former officers and directors involved. Guenther opined that the "business judgment" rule protected them from liability to the Association.

Finally, she stated that Guenther insisted, during settlement negotiations in the Ellison litigation, that the Board demand the Ellisons release all former directors and officers from liability to ensure that the insurance company would pay the costs and fees associated with the litigation. Roach stated that, ultimately, the Board demanded that the insurance company provide it with independent counsel in the Ellison litigation because it felt Guenther was representing the interests of the former officers and directors and not the Association's.[3] A plaintiff can establish a prima facie case for professional negligence without presenting expert testimony only where the failure of the attorney is so clear that reasonable minds could not differ, or the nature of the omission is such that a trier of fact would not require the assistance of an expert to understand why the attorney did, or did not, violate the standard of care. (Wilkinson v. Rives (1981) 116 Cal.App.3d 641, 647-648 [exception to requirement of expert testimony inapplicable to attorney's failure to advise client to execute optional affidavit when recording homestead declaration].) Examples of the exceptional circumstances in which no expert testimony is needed to establish a violation of the standard of care include an attorney's total failure to conduct any research on a point of law (Stanley v. Richmond (1995) 35 Cal.App.4th 1070, 1093-1094), or advising a client to commit an act that is a violation of the Penal Code (Goebel v. Lauderdale (1989) 214 Cal.App.3d 1502, 1509).

Here, whether Guenther breached the standard of care in giving or not giving advice to the Board regarding proposed use of reserve funds, investigating or reviewing the adequacy of the Association's reserve studies, conducting follow-up reserve studies, disclosing development plans, and the requirements of the Davis-Stirling Act all require expert testimony. The area of the law is specialized and the issues involved are not matters of common knowledge. By failing to rebut Guenther's expert

declaration that he complied with the applicable standard of care with its own expert declaration, the Association failed to carry its burden of showing a triable issue of fact as to the element of breach of duty. The court, therefore, did not err in granting summary judgment. In light of this conclusion, we need not address the element of causation.[4]

Disposition

The judgments are affirmed. Respondents are awarded costs on appeal.

We concur: GILBERT, P.J., PERREN, J.

1. This judgment removes respondents (the King defendants, H.R. Holdings, Lloyd, Richardson, Schiebelhut) from the action below. The third and fifth causes of action for breach of fiduciary duty and fraud apparently remain pending below against parties not involved in this appeal.

2. The CC&R's define the phrase "development plan" to refer to "the Plan considered and approved by the San Luis Obispo Planning Commission on August 11, 1971, which reflects the Developer's Plan and intention, subject to future modifications and amendments for the overall development of Heritage Ranch."

3. The declarations of Maynard and Hayden merely state that paragraphs 4 through 17 of Roach's declaration are true and accurate.

4. We deny the Association's motion filed March 2, 2005, to receive new evidence on appeal.