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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PATRICIA GONZALEZ ALFARO et al. Plaintiffs and Appellants, v. COMMUNITY HOUSING IMPROVEMENT SYSTEM & PLANNING ASSOCIATION, Inc., et al. Defendants and Respondents.	H031127 (Monterey County Super. Ct. Nos. M75546 & M78858) **ORDER MODIFYING OPINION AND DENYING REHEARING** **NO CHANGE IN THE JUDGMENT**

THE COURT:

It is ordered that the opinion filed herein on February 19, 2009, be modified as follows:

1. On page 1, first sentence, the number "22" is changed to "23" so the sentence reads:

> Plaintiffs are owners of 23 single-family residences[1] in the Moro Cojo inclusionary housing development projects (sometimes "the Projects") outside of Castroville in the County of Monterey.

2. On page 1, footnote 1, beginning "The 38" is deleted and the following footnote is inserted in its place:

> [1] The 40 plaintiffs are named individually *infra* (beginning on p. 5) in the text that summarizes their grant deeds.
>
> We have modified our original opinion to increase the number of plaintiffs. We grant plaintiffs' implicit requests, filed after our original opinion, to augment the record with a reporter's transcript showing that the trial court had consolidated another action with this one and to take judicial notice of another grant deed.

3. On page 2, line 12, the number "22" is changed to "24" so the sentence reads:

> For the reasons stated below, we will dismiss the appeal as to the County of Monterey and will reverse the judgment after concluding that plaintiffs' properties are subject to a valid affordable housing deed restriction, that the statutes of limitations have lapsed as to claims by 22 plaintiffs of fraudulent and negligent nondisclosure and breach of implied contracts mostly against CHISPA, and that the same claims by the other 16 plaintiffs against South County remain viable.

4. On page 5, line one of the second full paragraph the number "11" is changed to "12"; and the number "16" is changed "18"; also, in the same paragraph on line 3, insert after footnote 3 and before the word "June" the following "May 31, 2000,Napolean and Ligaya Ducusin; June 5, 2000;" so the paragraph reads:

> CHISPA issued 12 grant deeds to 18 plaintiffs on the following dates: January 31, 2000, Jose and Maria Marin; May 11, 2000, Jennifer Cruz; May 12, 2000, Salvador Sanchez; May 31, 2000, Napolean and Ligaya Ducusin; June 5, 2000, Efrain and Amparo Ochoa; July 12, 2000, Celestino Salazar; July 13, 2000, Juan and Silvia Palacios; July 14, 2000, Lorena Maravilla; July 17, 2000, Estee Hurley; December 6, 2000, Howard Carter; February 12, 2001, Raul and Yolanda Perez; June 19, 2001, Panfilo and Isaura Barbaso.

5. On page 6, footnote 7, delete the third paragraph beginning "There was a pending stipulation" and ending "in the record."

6. On page 11, line 4, insert after the number"906" add as footnote 12 the following footnote, which will require renumber of all subsequent footnotes:

> [12] Code of Civil Procedure section 906 provides in part: "Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party . . . . The respondent, or party in whose favor the judgment was given, may, without appealing from such judgment, request the reviewing court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken."

7. On page 28, line 5 of the third full paragraph beginning "This statement of" the "24" is changed to "25" so the sentence reads:

However, as noted above (*ante* in fn. 7 on p.24), plaintiffs have apparently abandoned their earlier claims of intentional and negligent misrepresentations.

8. On page 37, the first full paragraph, beginning "In demurring to the original" is deleted and the following paragraph is inserted in its place:

> In demurring to the original complaint, CHISPA asserted, "the third cause of action, which sounds in fraud, is barred by the statute of limitations. The statute of limitations for a fraud based case of action is three years. (Code Civ. Proc., § 338, subd. (d).)" "Here from the face of the complaint, it is clear that the action was brought more than three years after . . . defendants' alleged failure to disclose the deed restriction." South County joined in this demurrer. The ruling sustaining the demurrers did not specifically rely on the statute of limitations. CHISPA reiterated this argument in its demurrer to the first amended complaint's allegations of fraudulent (tenth cause of action) and negligent (eleventh cause of action) misrepresentation. South County did not assert the three-year limitations period in its written demurrer to the first amended complaint, but it did orally at the hearing on its demurrer. The ruling otherwise sustaining the demurrers overruled them on the statute of limitations grounds. CHISPA did not again reiterate its statute of limitations defense in demurring to the second amended complaint. South County has invoked the same statute of limitations in its demurrer to the second amended complaint and on appeal, although the demurrer directed this argument only to the tenth cause of action alleging negligent nondisclosure.

9. On page 40, footnote 22 beginning "This group includes" is deleted and the following footnote as renumbered is inserted in its place:

> [23] In their petition for rehearing, the plaintiffs who received grant deeds containing a reference to the deed restriction on resale price offer a new excuse for failing to discover the nature of this restriction. Those plaintiffs who are illiterate in English assert that "no person can receive actual notice of anything from a document written in a language the person cannot read." While the complaint alleged their illiteracy, plaintiffs did not argue in their briefs or at oral argument that illiteracy immunizes them from receiving notice from documents. As this court has stated, "a reviewing court need not consider points raised for the first time on petition for rehearing." (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.)
>
> Moreover, this new argument lacks legal support. While the law is solicitous of those who are particularly susceptible to fraud due to their ignorance, age, or infirmity, illiterate adults are still expected to be prudent in their business transactions. (See *C. I. T. Corporation v. Panac* (1944) 25 Cal.2d 547, 559-560.)

"[I]t is not unreasonable for the state to expect that persons such as those in plaintiffs' position will promptly arrange to have someone translate the contents of the notice" apparently pertaining to the person's right to receive welfare benefits. (*Guerrero v. Carleson* (1973) 9 Cal.3d 808, 814.) Similarly, it would be prudent for an illiterate first-time homebuyer to get the help of a trusted person in reading and translating the documents seemingly essential to becoming a homeowner.

These plaintiffs offer to allege that defendants communicated with them orally and in writing exclusively in Spanish "except for the grant deeds, preliminary title reports, and other escrow documents." Civil Code section 1632, subdivision (b), requires that Spanish translations be provided for several kinds of documents that were negotiated primarily in Spanish, not including grant deeds.

Plaintiffs' petition for rehearing also clarifies that on the final pages of their reply brief, they intended, in admittedly "confusing phrasing," to ask for leave to amend so that all plaintiffs can allege causes of action for specific performance and damages based on the breach of a common provision in their promissory notes relating to their right to resell their residences.

"The general rule is that points raised for the first time in a reply brief will not be considered unless good cause is shown for the failure to present them before." (*Trustee Capital Wholesale Electric etc. Fund v. Shearson Lehman Brothers, Inc.* (1990) 221 Cal.App.3d 617, 627.) Plaintiffs offer no explanation for failing to discover this language in their promissory notes, executed in 2000 and 2001, until after they filed their opening brief on appeal on August 15, 2007. Defendants have had no opportunity to brief this request, such as what limitations period is applicable, whether plaintiffs have shown diligence, and whether the new causes of action would relate back to the filing of the original complaint. Accordingly, we do not reach this request to order the trial court to grant leave to amend.

On the same reasoning, we do not reach plaintiffs' offer, in their petition for rehearing, to amend the complaint to allege that they were told about many deed restrictions, though not the resale restriction, in workshops put on by CHISPA before they undertook construction of their residences. Nor do we consider plaintiffs' three additional offers to allege a variety of other facts long known by them.

10. On page 43, footnote 23 (renumbered 24), the last sentence of the second full paragraph, the references "(*ante* in fn. 16 on p. 24)" is changed to "(*ante* in fn. 17 on p. 25)" so the sentence reads:

As we have explained above (*ante* in fn. 17 on p. 25), we interpret this cause of action as arising in fraud, so it is subject to the longer statute of limitations.

There is no change in the judgment.

Appellants' petition for rehearing is denied.

Dated: _____

RUSHING, P.J.

WE CONCUR:

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PREMO, J.

_____

BAMATTRE-MANOUKIAN, J.