Filed 12/6/12 Promenade at Playa Vista HOA v. Western Pacific Housing CA2/1
Opinion following remand from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PROMENADE AT PLAYA VISTA HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. WESTERN PACIFIC HOUSING, INC., et al., Defendants and Appellants.	B225086 (Los Angeles County Super. Ct. No. BC424950)

APPEAL from an order of the Superior Court of Los Angeles County, Emilie H. Elias, Judge. Reversed with directions.

Wood, Smith, Henning & Berman, Stephen J. Henning, Sheila E. Fix, Tracy M. Lewis and Robert G. Amundson for Defendants and Appellants.

Fenton Grant Mayfield Kaneda & Litt, Daniel H. Clifford, Joseph Kaneda and Bruce Mayfield for Plaintiff and Respondent.

This appeal presents the question of whether, in response to a construction defect action brought by a condominium homeowners association, the developer can compel binding arbitration of the litigation pursuant to an arbitration provision in the declaration of covenants, conditions, and restrictions (CC&R's). The answer is yes.

I

BACKGROUND

The facts and allegations in this appeal are taken from the pleadings, the exhibits submitted in connection with the motion to compel arbitration, and the standard procedure for creating a common interest development.

Defendants Western Pacific Housing, Inc., and Playa Capital Company, LLC (Developers), constructed, marketed, and sold a 90-unit condominium complex located on West Pacific Promenade in Playa Vista, California. Before the homeowners association (Association) came into existence or a single unit was sold, the Developers drafted and recorded the CC&R's. Only the Developers signed that document.

The CC&R's contained a mandatory arbitration provision, requiring that any disputes between the Developers, on the one hand, and the Association or a condominium owner, on the other hand, be submitted to binding arbitration. According to its terms, the provision could not be amended without the consent of the Developers. The CC&R's made the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1–16) applicable in interpreting and enforcing the arbitration provision.

Sales of the units began in 2004. In addition to the CC&R's, each "Purchase Agreement and Escrow Instructions" contained a mandatory arbitration provision, requiring that postclosing disputes between the Developers and the buyer be submitted to binding arbitration. The purchase agreements, unlike the CC&R's, were signed by both the Developers and the buyer.

Initially, the members of the Association's board of directors were appointed by the Developers. Ultimately, the Developers sold all the units and no longer had any ownership interest in the complex. The owners replaced the initial board members with individuals of their own choosing.

On October 29, 2009, the Association filed this action against the Developers, alleging construction defects in the roofs, stucco, windows, and doors, and the structural, electrical, plumbing, and mechanical components and systems. The Developers responded with a motion to compel arbitration, relying on the arbitration provision in the CC&R's and the individual purchase agreements.

The Association filed opposition, contending the CC&R's did not permit the Developers to compel arbitration because they were equitable servitudes, not a contract, and, alternatively, if they were a contract, enforcement was barred because the contract was unconscionable. The Association also pointed out that 30 of the original buyers had sold their units, and the arbitration provision in their purchase agreements with the Developers did not apply to the subsequent purchasers.

The motion was heard on April 12, 2010. By order of the same date, the trial court denied the motion to compel. The Developers appealed.

II

DISCUSSION

This case is before us for the second time. In *Promenade at Playa Vista Homeowners Assn. v. Western Pacific Housing, Inc.* (Nov. 8, 2011, B225086), we affirmed the trial court, concluding that the CC&R's, including the arbitration provision, were equitable servitudes, not a contract, and that only the Association or a condominium owner — not the Developers — could compel arbitration under the CC&R's.

On December 16, 2011, the Developers filed a petition for review with the California Supreme Court. On January 25, 2012, the court granted the petition but deferred further action in the case "pending consideration and disposition of a related issue in *Pinnacle Museum Tower Assn. v. Pinnacle Market Development* S186149." (*Promenade at Playa Vista Homeowners Assn. v. Western Pacific Housing, Inc.* (Cal. 2012) 136 Cal.Rptr.3d 667.)

On August 16, 2012, the Supreme Court filed its opinion in *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223 (*Pinnacle*). On October 10, 2012, the Supreme Court transferred this case back to us

"with directions to vacate [our] decision and to reconsider the cause in light of *Pinnacle*[, *supra*,] 55 Cal.4th 223." (*Promenade at Playa Vista Homeowners Assn. v. Western Pacific Housing, Inc.* (Cal. 2012) 148 Cal.Rptr.3d 496.) The parties did not file any supplemental briefs. (See Cal. Rules of Court, rule 8.200(b).)

In *Pinnacle*, the Supreme Court held that, under the FAA, a developer can compel the arbitration of disputes with a homeowners association based on an arbitration provision in the CC&R's. The high court concluded that the CC&R's, including the arbitration provision, constitute an enforceable contract (*Pinnacle*, *supra*, 55 Cal.4th at pp. 236–246) and that such an arbitration provision is not unconscionable (*id.* at pp. 246–251).

Our prior decision in this case is inconsistent with *Pinnacle*. Accordingly, the trial court's order denying the motion to compel arbitration must be reversed, and, on remand, the trial court must grant the motion.

III

DISPOSITION

The prior opinion in this case is vacated, the trial court's order denying the motion to compel arbitration is reversed, and, on remand, the trial court shall enter a new order granting the motion to compel arbitration. Appellants are entitled to costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.