

**Court of Appeal Reiterates that Alleged Breach of Fiduciary Duty is Not a Defense for Non-Payment of Assessments**  
*In this Unpublished Decision, a California Court of Appeal Ruled that a Board Member's Alleged Breach of Fiduciary Duty Did Not Excuse a Former Association Member from His Obligation to Pay Assessments*

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This case has not been certified for publication in the official case reports of California. This means it cannot be cited or relied upon in court cases; however, it is worth reviewing. How often do we hear from an owner that they refuse to pay their assessments because of a breach of the CC&Rs by the association? Well, this case illustrates that the association's alleged breach of the CC&Rs does not excuse an owner's obligation to pay assessments.

Canterbury Woods is a common interest development, consisting of 18 individually owned lots and 3 common area lots, all subject to recorded CC&Rs. Pursuant to the CC&Rs, the Association is responsible for maintaining the common area lots. Oddly enough, these common area lots were not owned by the Association. Rather, the common area lots were owned by an Association board member and leased back to the Association. The CC&Rs required homeowners to pay assessments to the Association.

The defendant homeowner did not pay the assessments and instructed his tenants not to use the common area lots.<sup>1</sup> Because the Association had not recorded a lien to secure the delinquent assessment account, the defendant homeowner was able to sell his lots without paying the assessments he owed. The Association thereafter sued him to recover the delinquent assessments and related charges. However, the trial court found that the board member had breached his fiduciary duty to the Association. This board member owned the common area lots and leased them to the Association. The court found this lease of the common area lots to be invalid, and on

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<sup>1</sup> Nonuse of the common area is another frequently heard, but invalid, excuse for failure to pay assessments.

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this basis, found a breach of the board member's fiduciary duty to the Association. The trial court then found that this breach of fiduciary duty excused the defendant from paying his assessments.

The Association successfully appealed the trial court's ruling. The Court of Appeal reversed the decision, ruling in favor of the Association. In doing so, it laid out the law clearly: The homeowner took title to his property subject to the CC&Rs. The CC&Rs require the homeowner to pay assessments. The Court of Appeal cited the 1994 case of *Park Place Estates Homeowners Association v. Naber*. The *Naber* case set forth the rule that *even if* an association had breached the CC&Rs, this was not a defense to the homeowner's nonpayment of assessments. The Court in *Naber* justified its position by pointing out the importance of assessments to the proper functioning of community associations.

The *Canterbury Woods* case was not certified for publication because it does not set forth a new legal principle—it simply applied the existing law and corrected the improper decision of the trial court. However, it is an important reminder regarding the obligation to pay assessments. While allegations of wrongdoing of an association must be addressed appropriately, the obligation to pay assessments is an independent covenant and is not excused by any alleged wrongdoing on the part of the association.