

The Case of the Very Expensive Windows: An Insider's Perspective on an Enforcement Action

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The case of *Chapala Management Corporation v. Stanton* (2010) 186 Cal.App.4th 1532, started out like most other enforcement actions. I received a call from the manager of Chapala Management Corporation asking for help in dealing with owners who installed two windows on the front of their condominium unit in disregard of several denials from the Association's Architectural Review Committee ("ARC"). Although the type and style of the windows were acceptable to the ARC, the color was not. The Stantons insisted on installing "sandtone" colored windows (which is a light taupe color), although every other similarly-situated window in the community was darker brown. Anyone driving by the Stanton property (which was conveniently located by the front gate of the community) could see that these windows were inconsistent with the architectural style of the development.

The Association offered mediation to the Stantons in an effort to resolve the matter without litigation, but the Stantons refused to participate. The Association even tried to resolve the matter informally, but to no avail. Worried that allowing such a departure in window color would open the proverbial flood gates for others to have inconsistent window color, the Association decided to proceed with an enforcement action against the Stantons in the San Diego County Superior Court, represented by me and EG&H attorney Rian W. Jones.

It is important to note that this dispute could have been resolved by simply painting the windows a darker brown, which would have cost about \$300. The Association had a self-help provision in its CC&Rs that provided the Association with the right to remedy an architectural violation and charge the cost back to the member. However, the dispute with the Stantons over window color was about eight years in the making, and ultimately the Stantons had defied the Association by installing the windows without authorization. As a result, self-help did not seem to be a viable option that would have permanently resolved the matter. Moreover, the Association had demanded that the Stantons paint their windows on several occasions, and the Stantons refused to do so. Given the circumstances, painting the windows without permission would certainly have resulted in a lawsuit, so the Association decided it was best to file an enforcement action first to force the Stantons to bring the windows into compliance with the Association's color standards.

About a year after the lawsuit was filed, the case went to trial. After spending around \$80,000 in attorney's fees (thanks mostly to the unnecessary litigation tactics of the opposing attorney), the Association prevailed at trial. Based on well-established law and the provisions of the Association's governing documents, the trial court ruled that the Association had the right to restrict the color of windows to preserve the aesthetics of the community, and that the Stantons had breached the CC&Rs by installing the windows despite the ARC's multiple denials. The Stantons were ordered to either replace or repaint the windows in accordance with ARC standards, and were further ordered to pay the majority of the Association's attorney's fees and costs.

But the Stantons really wanted sandtone windows. They appealed the trial court's decision. After another year on appeal, and after forcing the Association to incur thousands more in attorney's fees and costs, the court of appeal confirmed the trial court's decision. Interestingly, part of the Stanton's argument on appeal was that the Association should have exercised its right to self-help and just painted the windows rather than filing a lawsuit. As disingenuous as this argument was (if the Stantons were willing to have the windows repainted, why did they fight this case all the way to the court of appeal?), the court of appeal ruled that the CC&Rs allowed the Association to either exercise the right to self-help or file an enforcement action. These options were not mutually exclusive. The court of appeal, however, was not pleased with the fact that a dispute that could have been resolved for \$300 ended up costing the parties over six-figures in attorney's fees and costs. The Association agreed with the court on this point; however, in dealing with homeowners who were so intent on breaching the CC&Rs, there was little choice but to litigate.

There are (at least) two morals to this story: (1) while "sandtone" may be an attractive color for replacement windows, it may not be worth the additional cost if it's not a color approved by the association, and (2) boards should do their best to resolve enforcement matters informally or through internal enforcement measures before resorting to court intervention, which can be very expensive and time consuming. However, sometimes an association has no other choice than to sue an owner to enforce the provisions of the governing documents. If violation notices and fines are not working to bring an owner into compliance with the governing documents, consult the association's attorney to see what other legal enforcement options are available.