VICTORY FOR DEVELOPERS TODAY IN THE SUPREME COURT

Author(s): Trainor Fairbrook

In a major victory for developers, an issue that we have been following for several years through multiple court cases was finally resolved today by the California Supreme Court.

Developers, in an effort to minimize litigation and fees, and to eliminate outrageous jury verdicts, routinely put arbitration clauses in their CC&Rs requiring disputes with buyers of their homes or condominiums to be resolved privately and not in court. Over the past several years, three lower appellate court decisions have said that those clauses are invalid, and that the members of the association can sue in court ignoring the arbitration provision.

Today, in Pinnacle Museum Tower vs. Pinnacle Market Development, involving a downtown San Diego residential high-rise development, the Court upheld the validity of arbitration clauses set forth in Covenants, Conditions and Restrictions so long as such provisions are reasonable. The Court also upheld the statutory scheme of the Davis-Sterling Act and the oversight by the Department of Real Estate as providing adequate protection to residential buyers who become part of a homeowners association.

Developers of residential projects can now assume that homeowner association members governed by well-written, reasonable CC&Rs will have to pursue their claims in arbitration and not before a developer-adverse jury. Over the next few days, we will be analyzing this decision to see what effect it will have on commercial condominium projects that are not within the oversight and review of the Department of Real Estate.

If you are interested in learning more about this decision, or would like a copy, please contact Chuck Trainor.