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**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

<p>Reddy</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>RUBY HILL OWNERS' ASSOCIATION</p> <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. <u>HG13671895</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Preliminary Injunction Denied</p>
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The Motion for Preliminary Injunction was set for hearing on 05/23/2013 at 09:00 AM in Department 16 before the Honorable Lawrence John Appel. The Tentative Ruling was published and has not been contested.

There is no appearance by any party.

IT IS HEREBY ORDERED THAT:

The Motion for Preliminary Injunction, filed by Plaintiffs Anil Reddy and Divya Reddy ("Plaintiffs") on March 29, 2013, is DENIED.

In deciding whether to issue a preliminary injunction, a court must weigh two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits; and (2) the relative interim harm to the parties from issuance or non-issuance of the injunction. The court's determination is guided by a mix of the potential merit and interim harm factors. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.) The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits. (*Id.*) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*)

Based on a consideration of the above factors and all the papers before it on the present motion, the court finds an insufficient showing of a likelihood that Plaintiffs will prevail on the merits of any of their causes of action so as to be entitled to the preliminary injunctive relief they seek in the instant motion. Further, the showing of interim harm to Plaintiffs is weak and Plaintiffs do not sufficiently demonstrate that the requested relief (permitting occupancy) is something the named defendant can be ordered to provide.

Plaintiffs seek an order requiring Ruby Hill Owners' Association ("RHOA") "to perform such tasks as necessary to allow [Plaintiffs] occupancy of their home until resolution of this action on the merits." (Notice of Motion, p. 1.) Plaintiffs have not sufficiently specified which such tasks they seek to have the court require RHOA to undertake or how RHOA's failure to perform such tasks violates any of their contractual or other rights.

The First Cause of Action in the Verified Complaint is for breach of contract, and alleges that Plaintiffs entered into an agreement with RHOA in which Plaintiffs agreed to abide by the Covenants, Conditions and Restrictions ("CC&Rs") and Architectural Design Guidelines ("Guidelines"). (Complaint, ¶¶ 44-

45.) Plaintiffs allege they abided by them but "were continually faced with delays, discrimination, and most recently, denial of [RHOA's] approval to occupy the home." (Id., ¶ 46.) Plaintiffs do not, however, specify which provision of the CC&Rs or Guidelines the RHOA breached, or which such provision requires RHOA to give occupancy approval or upon what conditions. Neither the complaint nor the memorandum filed on March 29, 2013 identifies or discusses any such provision of the CC&Rs or Guidelines. In the reply memorandum filed on May 17, 2013, Plaintiffs identify section 10.2.1 of the CC&Rs for the proposition that RHOA "is not permitted to prevent the habitation" of their residence, but instead allows only alternative remedies such as a fine or temporary suspension of the use of recreational facilities or voting rights. As Plaintiffs did not raise or address this provision in their complaint or moving papers, they have deprived RHOA of an opportunity to respond to it and the court need not consider the argument. (See, e.g., *Rotolo v. San Jose Sports and Entertainment, LLC* (2007) 151 Cal.App.4th 307, 318 n. 4.)

Even if the court does consider the argument, however, it is not persuasive. Section 10.2.1 does not specifically address occupancy rights or the procedure by which RHOA is to grant final approval of a design or construction, the latter of which is expressly addressed in Article XI of the CC&Rs. Instead, section 10.2.1 addresses RHOA's remedies for enforcing its rights under the CC&Rs in general. While section 10.2.1 states that RHOA shall not have the power to undertake enforcement actions which result in the "forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's individually owned Lot," it does not address the circumstances under which an owner is to be granted construction approval or occupancy rights in the first instance.

Plaintiffs also refer in their reply memorandum to section 11.11 of the CC&Rs, which articulates the process to be followed after the Architectural Design Committee ("ADC") determines that an improvement was not performed in substantial compliance with the approval granted or that approval was not obtained. That section allows for a Board hearing, in which the owner may present proof of compliance, followed by a ruling requiring remedy or removal within 45 days. Even if Plaintiffs had raised section 11.11 in their complaint or moving papers (which they did not), they have not specified how this provision was breached or how it entitles them to occupy the residence. To the contrary, RHOA presented evidence that the Board set a special meeting for September 24, 2012, to provide Plaintiffs with a hearing as contemplated in section 11.11, but that Plaintiffs and their counsel failed to attend. (McKeehan Decl., ¶¶ 14-16, Exhs. B and C.) The hearing proceeded anyway, after which the Board upheld the ADC's decision to deny written approval of the final construction. (Fonte Decl., ¶¶ 7-17, Exhs. A and B.) Thereafter, the Board informed Plaintiffs of the basis of the decision and invited them to reschedule another appeal hearing so they could present their evidence in person. Plaintiffs never rescheduled. (Somsen Decl., ¶¶ 3-5, Exh. A.)

Plaintiffs have not identified any provision of the CC&Rs (or any other alleged contract or law) that provides them with a right to occupy their residence despite their failure to appear at the Board hearing or to establish their compliance with the approvals required for final construction of the improvement. Indeed, it is not clear that RHOA has even prohibited Plaintiffs from occupying their residence. Instead, it appears that Plaintiffs are required to obtain an occupancy certificate from the City of Pleasanton (the "City"), not from RHOA. (See Complaint, ¶ 41; see also Jones Decl., ¶¶ 30-32.) If Plaintiffs believe the City has unjustifiably withheld an occupancy certificate, that is a matter to take up with the City, which is not a party to this lawsuit or this motion and as to which the court is powerless to order injunctive relief.

Aside from the failure to provide a sufficient contractual basis for any breach by RHOA, Plaintiffs' request for injunctive relief as to RHOA's approval process suffers from numerous additional deficiencies. First, Plaintiffs have not sufficiently explained why they failed to appear at the hearing on September 24, 2012 or to reschedule it. Failure to exhaust an administrative remedy such as that is an independent (and jurisdictional) basis for denying relief. (See, e.g., *Gupta v. Stanford University* (2004) 124 Cal.App.4th 407, 411; *Hood v. Hacienda La Puente Unified School Dist.* (1996) 65 Cal.App.4th 435, 439.) Second, mandatory injunctive relief, such as to compel RHOA to perform unspecified "tasks" so as to allow Plaintiffs to occupy their home, "is not permitted except in extreme cases where the right thereto is clearly established." (*Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.) Third, substantial deference is afforded to decisions by community association boards exercising discretion within the scope of their authority under CC&Rs. (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 265.) Not only have Plaintiffs failed to explain why they did not appear and present evidence at the scheduled Board hearing of their purported compliance with the required design approvals, as they seek to do in this lawsuit, but

Plaintiffs have failed to address numerous areas of asserted non-compliance including deviations from the submitted design, encroachments on the neighbor's property, interference with a water easement, and removal of a berm. (See, e.g., Fonte Decl., Exh. A, Exh. 3; Alexander Decl., ¶¶ 2, 4, 6-10, 13, and Exh. C; Townsend Decl., ¶¶ 30-48 and Exh. F.)

The Second Cause of Action is labeled as a "constructive taking of property." Plaintiffs have not submitted authority that this is a legally tenable claim, particularly in the context of enforcement of CC&Rs in a common interest development such as Ruby Hill. "Thus, subordination of individual property rights to the collective judgment of the owners association together with restrictions on the use of real property comprise the chief attributes of owning property in a common interest development." (Nahrstedt v. Lakeside Village Condominium Assn. (1994) 8 Cal.4th 361, 374.)

The Third Cause of Action is for promissory estoppel. This requires, among other things, "a promise clear and unambiguous in its terms" and reasonable and foreseeable "reliance by the party to whom the promise is made..." (Aceves v. U.S. Bank, N.A. (2011) 192 Cal.App.4th 218, 225.) The promise alleged in the Complaint is that "upon review and approval of the architectural and landscaping design plans and samples, implementation of those plans would be approved by the ADC and the Association." (Complaint, ¶ 62.) Plaintiffs do not allege when such a promise was made or who made such promise or what the specific terms thereof were. They also fail to demonstrate that they "implement[ed]" such plans consistently with what had been approved or that they obtained approval for all aspects of the improvement including the aspects identified as non-compliant or unapproved by RHOA. RHOA submitted evidence to the contrary and, while Plaintiffs submitted evidence showing that they remedied many of the asserted non-compliances, they have not submitted evidence showing that all have been addressed.

As to interim harm, while Plaintiffs submitted evidence that their inability to occupy their residence could affect their ability to enroll their children in the local public schools, they have not sufficiently demonstrated why occupying the second residence they purchased in the same development could not address this asserted harm. Although Plaintiffs state that the second home was purchased for their parents, they also introduced evidence that their parents are not yet living there and have not sufficiently demonstrated that an interim arrangement cannot be worked out whereby they would temporarily occupy that home so as to permit enrollment in the public schools. In any event, even if Plaintiffs sufficiently addressed all such deficiencies, the more fundamental deficiency is that Plaintiffs have not demonstrated what relief is available as to RHOA to address their request for occupancy. Instead, as discussed above, the record reflects that the City, which is not a party to this lawsuit or this motion, is responsible for issuing a certificate of occupancy.

RHOA's Objections to Plaintiffs' Complaint, filed on May 10, 2013, and numbered 1-40, are **OVERRULED**. Although RHOA is correct that many of the allegations in the Verified Complaint are conclusory and lacking in specific details, and that some allegations are not directly relevant to the issues in this motion, pleadings often contain the "ultimate facts" supporting the causes of action rather than all the supporting factual or evidentiary details. The court views RHOA's objections as going primarily to the weight or persuasive value of the challenged verified allegations rather than their admissibility. While the court will not exclude the allegations from its consideration altogether, it has considered their conclusory and often vague nature as affecting the extent to which such allegations support a "requisite degree of belief" concerning the facts Plaintiffs must establish to meet their burden of proof on this motion. (See Evid. Code § 115.) RHOA's Objections to the Reply Declarations of Anil Reddy and Harold P. Smith, filed on May 20, 2013, are **OVERRULED** for the same reasons.

Plaintiffs' Objections to Evidence, filed on May 17, 2013 and numbered 1-128, are **OVERRULED**. It appears that, with perhaps some exceptions, Plaintiffs are objecting to virtually every statement in every declaration submitted by RHOA. The court finds this tactic oppressive. (See, e.g., Reid v. Google, Inc. (2010) 50 Cal.4th 512, 531 [recognizing "that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical," and noting that this imposes an "extreme burden on trial courts...."]].) Further, for the same reasons discussed above, most or all of the objections go to the weight, generality or persuasive value of the proffered evidence rather than its fundamental admissibility. As with the sometimes conclusory and general nature of the verified allegations to which RHOA objects, the court will not exclude the challenged evidence but has considered Plaintiffs' objections in weighing its persuasive value.

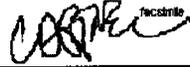
RHOA's Amended Request for Judicial Notice, filed on May 10, 2013, is **GRANTED**. Nevertheless,

the court does not take judicial notice of the truth of any matters asserted in the attached exhibits.

RHOA's objection to Plaintiffs' late-filed reply brief, filed on May 20, 2013, is **OVERRULED**. It appears that Plaintiffs' reply papers were not filed until 4 court days before the hearing instead of 5 court days and were served on RHOA by regular mail 5 court days before the hearing instead of by overnight mail or another method required by C.C.P. § 1005(c). Nevertheless, while the court does not condone the irregularity, it does not appear to have resulted in prejudice and the court exercises its discretion to consider the reply papers. (See C.C.P. § 475.)

The clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Dated: 05/23/2013



Judge Lawrence John Appel