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SAN LUIS OBISPO SUPERIOR COURT
BY [signature]
L. Tetley, Deputy Clerk

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO
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THOMAS G. SMITH, Plaintiff, v. VISTA GRANDE, INC., A California Corporation; and DOES 1 – 25, Inclusive, Defendants. AND RELATED CROSS-ACTIONS	Case No.: CV 100633 **STATEMENT OF DECISION**

I. INTRODUCTION

This is a long-running feud between a cooperative housing corporation and one of its shareholders stemming from a disagreement over responsibility for a failed water heater. Now in its 15th year, the dispute has once again taken shape in the form of a lawsuit, the third litigation contemplated by the shareholder over the past five years. A court trial adjudicating this controversy took place over a period of three days.

The Court has considered the documentary and testimonial evidence, the pretrial and trial memoranda submitted by both parties, the arguments of counsel, as well as Plaintiff's Objections to the Proposed Statement of Decision. The Statement of Decision that follows will address the legal and factual issues by stating the grounds upon which the decision rests.[1]

II. FACTUAL BACKGROUND

Defendant Vista Grande, Inc. (hereafter, the "Association") is a cooperative housing corporation formed in 1961 to own and manage two (2) apartment buildings containing 17 units located at 1415 Morro Street, San Luis Obispo, California (hereafter, the "Apartment Buildings").[2] Plaintiff Thomas Smith ("Smith") is a shareholder and occupant of Unit Number 5 under the terms of the Proprietary Lease with the Association, dated May 20, 1994 (hereafter, the "signed Proprietary Lease"). Plaintiff's Exhibit 1.

Sometime in August 1997, Smith's water heater failed for the first time. This set in motion two separate lawsuits and two mediated agreements between the parties related to the respective obligations of the Association and Smith.

On or about March 22, 2006, Smith initiated a pre-litigation mediation under Civil Code §1369.530 demanding that the Association abide by and enforce the signed Proprietary Lease and bring itself into immediate compliance with all its governing documents and California law or, alternatively, to submit such disputes to alternative dispute resolution.

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1 A statement of decision need do no more than this. (*Ermoian v. Desert Hosp.* (2007) 152 Cal.App.4th 475, 499-500 (citations omitted); *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125.) (citations omitted). The Court will not respond to each of the Plaintiff's Objections, except by noting that this Statement of Decision *does* address many of the issues that Plaintiff claims are *not* addressed herein, including the effect of the settlement agreement on the Proprietary Lease, election procedures, the applicability of the Davis-Stirling Act, and Vista Grande's damages.

2 Stock cooperatives appear to be threatened with extinction: "Owing to their lack of popularity and issues with obtaining finance for the resale of units, many stock cooperative projects are converted into condominiums. Legislation adopted in 2000 made it easier to convert stock cooperative projects into condominium projects. . . ." (*Forming California Common Interest Developments* (CEB) §1.77.)

On May 31, 2006, Smith and the Association participated in a pre-litigation mediation which resulted in the parties signing a Mediated Settlement Agreement (hereafter, the "First MSA"). Plaintiff's Exhibit 3. The First MSA provided, in pertinent part, that the Association would amend the governing documents in accordance with the Davis-Stirling Common Interest Development Act, Civil Code §§1350 *et seq*. (hereafter, the "Davis-Stirling Act"). It provided for a mutual release of claims.

On May 21, 2007, Plaintiff filed a Complaint for Breach of Fiduciary Duties, Injunctive and Declaratory Relief and To Enforce a Mediated Settlement Agreement against the Association and the Board members. (*See* Case No. CV07-0442.) In response to the 2007 Action, the Association filed a cross-complaint against Plaintiff for alleged breach of the First MSA.

On May 16, 2008, Plaintiff and the Association again participated in mediation, which resulted in a second Mediated Settlement Agreement (hereafter, the "Second MSA") to settle the disputes arising from the First MSA and earlier lawsuit. Plaintiff's Exhibit 5. The core agreement in the Second MSA was the appointment of a subcommittee to amend the governing documents.[3]

Aside from including standard mutual releases and a waiver of the Civil Code §1542, the Second MSA included the following specific mutual release of claims, which was "agreed to by the parties to assure that [it was] a final settlement of all claims:"

> "In return for the promises and covenants provided for herein, each side waives any all [sic] claims they may have against each other . . . arising out of the dispute which brought the parties to this mediation, including any claims or potential claims that each may have against each other whether or not included in the Action . . . .
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> This settlement is meant to resolve all matters between these parties so that neither will face a claim from the other at any time in the future arising out of any activities of, actions by, or dealings between these parties."

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[3] For almost two (2) years, the subcommittee worked on preparing amended governing documents, which were sent to the shareholders for a vote in March/April of 2010. Plaintiff's Exhibit 7.

On or about May 10, 2010, Plaintiff initiated another pre-litigation mediation process. Plaintiff's Exhibit 10. The third mediation was unsuccessful, and this action was filed.

II. DISCUSSION

Perhaps the most critical component of the Second MSA can be found on pages 2 and 3 of Exhibit 5, which reads, in pertinent part, as follows:

> It is agreed that the Board of Directors of Vista Grande will form an autonomous subcommittee of the Board with the following individuals being on this subcommittee: Carlyn Christianson, Jan Durocher and Kitch Barnicle. *This subcommittee will be formed for the purpose of having the Vista Grande governing documents created and/or amended so as to conform to current and future laws which affect and control the management and operation of Vista Grande.* The members of the subcommittee may include persons in addition to the individuals identified above but shall not include Melba Moe, Wayne Rydberg, Shirley Weitkum and Mary Dukes. The subcommittee will work and operate completely separately from the aforementioned individuals whether or not these individuals are members of the Vista Grande Board of Directors. (Emphasis added)

Although the release signed by the parties on May 16, 2008, is indeed broad, it is unclear whether the Proprietary Lease, which lies at the very heart of this dispute, is part of the "governing documents" that were supposed to be amended as part of the settlement, or instead was to be "excepted" or carved out from the general release. (See *Jefferson v. California Dept. of Youth Authority* (2002) 28 Cal.4th 299, 309-10.) Because the Second MSA contains some ambiguity on these issues, the Court received extrinsic evidence, through testimony and exhibits, in order to determine the parties' intentions. (*Id.*)

There is also a dispute whether Smith, in signing the Second MSA, nevertheless retained the right to sue regarding the lawfulness of the new governing documents. In this regard, Smith maintains that his existing (1994) proprietary lease is binding and enforceable, that the Davis-Stirling Act applies to Vista Grande, that the Association has filed incorrect tax returns, and that the Association's election procedures were flawed.

In order to discern the meaning of the phrase "governing documents," the Court has examined the record in detail. The paramount exhibit is Smith's complaint in CV 07-0442,

in which Smith alleges that the proprietary lease, the Association Bylaws, and the Articles of Incorporation were not compliant with state law, particularly the Davis-Stirling Act. *See* Defendants' Exhibit E at ¶¶18, 19, 20 and 23. Importantly, Smith's own complaint refers to these documents, *collectively*, as the "governing documents". Exhibit E at ¶13. From this admission, it is readily apparent that the proprietary lease is part of the "governing documents" that were on the settlement table, along with Articles of Incorporation, Bylaws and other documents.

Smith's earlier complaint is not the only place where the proprietary lease is described as one of the "governing documents." Numerous memoranda and reports generated during the amendment process (both before and after the Second MSA) included discussions of the modification of the proprietary leases as part of the "governing documents." *See, e.g.,* Plaintiff's Exhibit 7, the Association's revised CC&Rs (definition of "governing documents" at Paragraph 1.14 includes bylaws, articles of incorporation and *proprietary leases*); Plaintiff's Exhibit 3, the 2006 Mediated Agreement, (paragraph 2 states the parties' intention to amend the "project's documents," which include the proprietary lease, Articles of Incorporation and Bylaws); Plaintiff's Exhibit 4, a May 2007 memorandum updating information regarding "governing documents" (Discussion under that heading includes the status of updating the proprietary lease, Bylaws and Articles of Incorporation); Defendant's Exhibit F, a compilation of Board Minutes (page 2 reflects agreement that the update of the proprietary lease was the subcommittee's first order of business); Defendant's Exhibit G, reports on subcommittee activities and related shareholders communications (pages 2, 11, 13, 15 and 17 refer to the proprietary leases).

As a practical matter, it also makes sense that Smith's proprietary lease would have been on the settlement table while the Bylaws and Articles of Incorporation were being amended. Indeed, Smith faults the Association for having failed to review the governing documents for internal consistency. (Plaintiff's Opening Trial Brief at page 4; lines 14-15) Consistency cannot be achieved unless all of the relevant documents are revised, including the proprietary lease. In this regard, paragraph 4:02 of the amended Articles of Incorporation

references the Maintenance Obligation Chart attached as Exhibit B. (Plaintiff's Exhibit 7.) The Maintenance Obligation Chart, in turn, defines the respective maintenance obligations of the parties. Not surprisingly, the amended proprietary lease is revised in order to be consistent with the amended Articles of Incorporation. (Exhibit 7 at page 50 ¶11)

The Court concludes that proprietary leases, including Smith's lease, are part of the "governing documents" that were to be created and/or amended as part of the Second MSA. Given all the facts and circumstances leading up to the Second MSA, it is highly unlikely that the Association would have agreed to amend the governing documents and to pay attorneys' fees to Smith, while at the same time setting the table for future litigation over a revised proprietary lease.[4]

With respect to reserving any right to sue the Association, the Court heard testimony from the three subcommittee members, as well as Mr. Smith. Ms. Carlyn Christianson, with substantial experience on both the County and City planning commissions, testified that the basic intent of the parties was to update the governing documents, to drop the cross-complaint, to pay money to Smith for attorneys' fees and, in the case of the Association, "to stop the harassment of the shareholders by Smith."

Ms. Kitch Barnicle, who holds Masters and Ph.D. degrees, testified that the intent of the 2008 MSA was to end litigation so that neither the Association nor Smith would wind up in court over any issues having to do with the Association. She and the other members of the subcommittee invested approximately 18 to 20 months in the process, established a website and received voluminous comments from the shareholders. The goal was to get "buy-in" from everyone.

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[4] Although Plaintiff contends that his original proprietary lease can only be modified in writing, there are several reasons why this argument lacks merit. First, the Second MSA, in fact, constitutes a written consent to amend Smith's lease. Second, it constitutes a waiver of any required written formalities under the proprietary lease. Third, the Association may choose to leave Smith's existing lease largely "as is" such that the issues about which he complains remain, as they seem to be at this stage, mostly hypothetical. However, Smith bargained in writing for an independent subcommittee that was charged with amending the governing documents, including the proprietary lease. He simply has no standing to complain about the results of the subcommittee's work.

Ms. Jan Durocher, who holds an architecture degree, testified that new documents were prepared, that the process took approximately about 18 months, and that multiple drafts of documents were circulated to the shareholders. When questioned about the specific purpose of the subcommittee, Durocher explained that there was no agreement that the Board would adopt new governing documents, only that the subcommittee would draft them in good faith and with a full opportunity for comment from shareholders, including Smith. Durocher testified to her understanding that the subcommittee's obligation began with research and ended with the development of updated documents. Once the completed documents were submitted to the Board for presentation to the shareholders, the subcommittee disbanded.

Smith testified that he took issue with the Second MSA mainly because he is "still waiting to be paid for his water heater." He said that the proposed lease makes him responsible for some maintenance issues.[5] In terms of the subcommittee, Smith candidly admitted that he selected Durochers, Christianson and Barnicle because he trusted them to do a good job.

Although he believed that a set of documents would be generated to meet the Government Code, and that those documents would be subject to shareholder and Board approval, Smith did not think of himself as having veto power. He was unable to articulate any right to reject the documents grounded in the 2008 MSA.

The trial testimony confirms that the parties bargained for a good faith process leading toward amendment of the governing documents. In selecting and vetoing subcommittee membership, Smith trusted that the process would be fair and that the new governing documents would comply with law; however, he did not reserve any right to sue on any subject related to the governing documents.

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5 The issue of responsibility for maintenance and repair costs of the water heater and similar appliances has been at the center of this dispute from the very beginning. Those issues are directly and emphatically encompassed within the Second MSA and cannot possibly be subject to further litigation.

In *Winet v. Price* (1992) 4 Cal.App.4th 1159, the settlement and release stated three separate times that the parties intended to release each other from all claims. The court reviewed the literal terminology of the contract and found intent, through a general mutual release, to release *all* claims. As here, the parties: (1) specifically acknowledged that there was a risk they might suffer losses unknown or unanticipated at the time of the release; (2) were represented by counsel; and, (3) with the knowledge of the risks, and upon advice of counsel, they assumed the risks of unanticipated claims. (*Winet,* at 1166 - 1167.)

Even more clearly than the situation in *Winet*, here it is apparent that the settlement and release bar Smith's claims. He cannot now bring suit to obtain declaratory relief about the validity of his 1994 proprietary lease; he has no standing to seek declaratory relief regarding the applicability of the Davis-Stirling Act; he cannot dispute whether the Association has filed incorrect tax returns; and, he did not retain any right to contest the Association's election procedures.

Both the Second MSA and extrinsic evidence confirm that there was no reservation of any right to sue anyone on any basis related to the process of amending the Association's governing documents. (*Jefferson* v. *Department of Youth Authority* (2002) 28 Cal.4th 299, 310.) All of Mr. Smith's claims in this lawsuit are, therefore, barred by the release he signed in 2008. (*Winet*, 4 Cal.App.4th at 1166-69; *Jefferson*, 28 Cal.4th at 310.) [6]

Putting the release and standing issues aside for one moment, the Court will briefly address the merits of Plaintiff's claims regarding the applicability of the Davis-Stirling Act to the Vista Grande stock cooperative.[7]

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[6] With respect to the cross-complaint, as more fully explained above, the Court concludes and declares that, by bringing suit, Smith violated the Second MSA. Cross-Defendant Smith owes the Association for the legal fees it incurred in defending this lawsuit. Because the ramifications of filing a suit in contravention of the Second MSA should be obvious by now, the Court declines to enter an injunction with respect to further legal actions that could be contemplated by Smith.

[7] That the Davis-Stirling Act applies to some extent is not disputed. (*See, e.g.,* Civil Code §1351 (c) (4) and (m) ("Stock cooperative" means a development in which a corporation is formed . . . primarily for the purpose of holding title to . . . improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation); *Golden Rain Foundation v. Franz* (2008)

In the Statement of Decision in *Watts v. Oak Shores*, CV06-0325, this Court recently stated:

> With respect to judicial review of controversies between a homeowners' association and one of its members over regulatory matters, there are well-defined standards to be applied. Generally speaking, courts will uphold a decision made by the governing board of a homeowners' association so long as it represents a good faith effort to further the purposes of the common interest development, is consistent with the development's governing documents, and complies with public policy. (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 374.)
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> Stated somewhat differently, so long as a homeowners' association acts upon reasonable investigation, in good faith, and in a manner the association reasonably believes to be in the best interests of the association and its members, its decision will be upheld. (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 265; *Nahrstedt,* 8 Cal.4th at 374; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 979 ("[C]ourts should defer to the discretionary decisions of duly constituted community associations . . . where those decisions are made within the scope of their authority under relevant statutes, covenants, and restrictions, upon reasonable investigation, in good faith, and in a manner in the best interests of the Association and its members."); *Hannula v. Hacienda Homes* (1949) 34 Cal.2d 447 ("refusal to approve plans must be a reasonable determination made in good faith").)
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> The burden of proof is on an objecting homeowner to show that an association's decision "is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the development's residents, or violates a fundamental public policy." (*Nahrstedt,* 8 Cal.4th at 361, 386; *Cohen,* 142 Cal.App.3d at 642, 651-654.) In this regard, "courts do not conduct a case-by-case analysis of the restrictions to determine the effect on an individual homeowner; [instead they] consider the reasonableness of the restrictions by looking at the goals and concerns of the entire development." (*Dolan-King,* 81 Cal.App.4th at 965, 975.)
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> Although rules and regulations enacted by the board of a homeowners' association are not recorded, they are entitled to similar judicial deference. "[W]here a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the

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163 Cal.App.4th 1141 (although Legislature intended Davis-Stirling Act to govern pre-existing common interest developments, it "demands little" of pre-1986 common interest development.).)

> community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise." (*Lamden,* 21 Cal.4th at 249, 265.)

Not only did Smith forfeit his right, through the Second MSA, to challenge the issues now before the Court, he also has not presented evidence supporting a conclusion that the Association has failed to comply with the Davis-Stirling Act or other applicable law.

The amended governing documents were promulgated in good faith. There is no identification of any provisions that are arbitrary or that violate public policy. Any burdens on the use of lands do not substantially outweigh the restriction's benefits to the development's residents. No evidence was presented establishing that the shareholders would suffer a loss of value based upon the amended proprietary lease, nor was there sufficient evidence to support a finding that the tax methodology utilized by the Association is improper. Likewise, there was insufficient evidence presented to establish that the voting process for adoption of the amended governing documents violated applicable law.

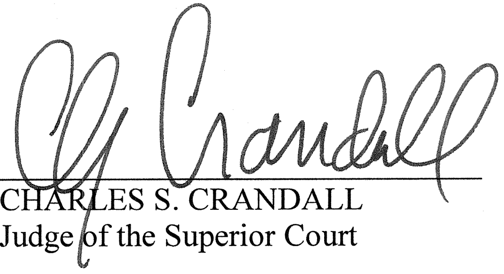
IV. CONCLUSION

Considering all of the evidence, there is little doubt in the Court's mind that the 2008 Mediated Settlement Agreement was intended by all parties, including Plaintiff Smith, to put an end to all future litigation over the governing documents between Smith and the Association. Moreover, Smith has presented insufficient evidence to establish that the Association has violated the Davis-Stirling Act or any other provision of applicable law.

Counsel for the Association should prepare the Judgment and submit it to Smith's counsel within 10 days of service of this Statement of Decision. Issues with respect to attorneys' fees and costs shall be reserved for later consideration by way of noticed motion and a memorandum of costs. Any disputes with respect to the form of the Judgment, as well as a briefing schedule for the attorneys' fees and costs issues, will be discussed at a hearing on April 26, 2012, at 9:30 a.m. No later than April 20, 2012, counsel for the Association

should email to the clerk a copy of the proposed Judgment, showing areas of agreement and disagreement, if any. No other pleadings on these subjects should be submitted until further order of the Court.

Dated: March 28, 2012



CHARLES S. CRANDALL
Judge of the Superior Court

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