

FILED

09/08/2023

Brenda L. McCormick
Executive Officer and Clerk

H McIntyre

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

LEON REINGOLD, an individual and
MARINA REINGOLD, an individual,

Plaintiffs,

vs.

BELL CANYON ASSOCIATION, INC., a
California Non-Profit Corporation; RAY
JADALI, an individual; KEIR MILAN, an
individual; PETER CARNIGLIA, an individual,
et al.,

Defendants.

) Case No.: 201800510717CUBT

) STATEMENT OF DECISION

This matter came on calendar for trial before the undersigned Court sitting without a jury on February 3, 2023. Plaintiffs and cross defendants Leon Reingold and Marina Reingold were represented by Mr. Rodney Lewin and Ms. Allyson P. Wittner. Defendant and cross-complainant Bell Canyon Association, Inc. was represented by Mr. Joshua Bordin-Wosk, Mr. Wayne Pariser, and Ms. Eliza Langdon Oliver. The case concluded with the arguments of counsel on June 8, 2023. The Court thereupon took the matter under submission, and now issues its Statement of Intended Decision on August 1, 2023. Timely objections were received from both sides, and the Court now issues its Statement of Decision. This Statement of Decision is intended to discuss the decision the Court has reached, and the basis for that decision.

1 The case involves a homeowner suing their homeowners association for damages
2 resulting from the HOA's wrongful issuance of a Stop Work Order and the failure to approve
3 their plans for building a residence on a lot that they owned. The HOA has cross-complained for
4 declaratory and injunctive relief to establish that its conduct was within the scope of its authority
5 as established by the governing documents (C, C and Rs), and also by established case law.

6 Bell Canyon is an upscale unincorporated gated community consisting of over 75
7 separate lots, many of which have a single family residence. Bell Canyon is regulated by a set of
8 written conditions, covenants, restrictions and reservations (hereafter the "governing
9 documents") which are enforced by a Board of Directors elected by and from the property
10 owners within the community. Purchasing a lot or an existing residence requires that such a
11 purchaser comply with, and be subject to those governing documents. Leon and Marina Reingold
12 constructed a residence at 15 Maverick in Bell Canyon in 1988. They were very satisfied with
13 both the residence and living in Bell Canyon, and in 2014, purchased an available 29 acre lot in
14 Bell Canyon at 9 Wagon. It was their intention to build their dream home on this lot for
15 themselves and their family, including Marina's elderly parents. The lot which they purchased
16 was unimproved, and would require significant grading and other preparations to become
17 suitable for the construction of their proposed residence.

18 The governing documents for Bell Canyon provided for the establishment of an
19 independent Architectural Review Committee (the "AC") to review plans for development to
20 insure that the plans complied with the requirements and restrictions stated in the governing
21 documents. Bell Canyon is a unique community whose residents do not want development to be
22 a free-for-all of architectural styles, nor were homes to be cookie cutter a la Levittown, NY after
23 the Second World War.

24 The governing documents are in excess of 20 pages, and most of them are not relevant to
25 the present dispute between the parties. Section 21 of Article III is captioned "Architectural
26 Controls." It requires that no building or structure shall be constructed unless "...complete
27 detailed plans and specifications...and the grading plan..." shall have been first been submitted
28 for approval to the Architectural Committee and been approved "...in writing." Approval by the

1 Architectural Committee may be withheld because of "...reasonable dissatisfaction..." of the
2 committee with the grading plan, and other designated aspects of the plan. Approval may also be
3 withheld by the Architectural Committee because of its "...reasonable dissatisfaction..." with the
4 plans which would render the structure "...inharmonious..." with the "...general plan of
5 improvement..." of the property. Once plans are submitted to the Architectural Committee, it is
6 given 30 days to act. If it does not act within that period of time, the plans are deemed to be
7 approved. The governing documents also state restrictions on the steepness of any slope (section
8 24) and give the Architectural Committee the power to approve deviations from the governing
9 documents (section 25.)

10 The Architectural Committee (hereafter "AC") itself is created in Clause IV of the
11 governing documents. At paragraph 4, it is given the power to approve or disapprove plans for
12 the construction of structures. In exercising its powers, it is stated that the AC shall adhere to the
13 "general plan" of development. The governing documents also state that the AC shall be
14 comprised of three persons.

15 The AC itself has its own published standards (Ex. 23.) This document states that all
16 property is to be developed and maintained in conformity with the C,C and R's and the general
17 plan of development for the community. Property owners are cautioned that complete and
18 descriptive plans for grading and building must be approved by the AC, and that approval of
19 plans may be withheld if, in the committee's "reasonable judgment," any aspect of the plan
20 would render a proposed structure "inharmonious" with the general plan of improvement, or
21 harmony "...of the Canyon..." The AC reserved unto itself the power to nullify any approval if
22 there was deviation from the previously approved plans. The function of the AC included voting
23 at a meeting of itself duly held in which a quorum is present for it to be an "act" of the committee
24 (Ex. 23, section 3.2.)

25 In addition to its "Standards" publication, the AC has a separate publication entitled
26 "Architectural Guidelines and Procedures (Ex. 22.) That further explains an optional Pre-
27 Submittal Review of development plans, but also explains the review and approval process and
28 the procedure for reconsideration, i.e. appeal of the AC decision. This states that a

1 reconsideration will be at an open meeting of the Board of Directors, and that the Board's
2 decision shall be in a written decision no later than 30 days after the homeowner's request for
3 reconsideration.

4 The recitation above is not meant to be an exhaustive description of the function of the
5 Board of Directors or the AC. It is meant to give a general outline of the parties participating in
6 this dispute. More specific roles and conduct will be discussed as they become necessary and
7 relevant.

8 The interaction between the parties began in 2015 and 2016. The Reingolds had
9 submitted plans for construction at 9 Wagon to the AC. Separately, Leon Reingold had lodged a
10 complaint with the Bell Canyon Association (hereafter "BCA") about conduct on the part of Eric
11 Wolf, the then president of the Board. Acrimony between the two men soon developed. To
12 resolve that dispute, the parties executed a document entitled "Covenant for Indemnification and
13 Hold Harmless Agreement" dated November 21, 2016 (hereafter "Agreement"). The Court ruled
14 pre-trial that the specifics of the Wolf-Reingold dispute were not relevant except for any
15 potential breach of the Agreement, and to establish the time of the dispute in the chronology of
16 events. The essence of this Agreement was that the Reingold grading plan dated November 6,
17 2016 would be approved, and that Reingold would not sue Bell Canyon for anything related to
18 that particular grading plan. The parties also agreed that they would act in good faith to carry out
19 the purposes of the Agreement. Plaintiffs allege here that Bell Canyon breached this Agreement
20 by not acting in good faith.

21 To give context to all of this, the Court notes that at 29 acres, the Reingold lot was large,
22 and that their proposed area of construction was at the highest point on their lot, and one which
23 overlooked its immediate surroundings in Bell Canyon. Development of a building pad on that
24 lot required movement of a large amount of dirt as well as the creation of a supporting slope for
25 the building pad itself. As events unfolded, it was the size and appearance of the slope which
26 resulted in much opposition from neighbors, and much conflict with the AC and Board of
27 Directors. It is the handling of these disputes by the AC and the Board that form the Plaintiffs'
28 claim for breach of fiduciary duty by the Bell Canyon defendants, and also the claim by the

1 Plaintiffs that the defendants breached the November 21, 2016 Agreement.

2 The Plans which were approved by virtue of the Agreement called for a slope 16 feet in
3 height on the south facing portion of the Reingold lot. As this was being developed, neighbors
4 began complaining that it was unsightly, and not harmonious with the character of Bell Canyon.
5 In May of 2017, the Reingolds submitted a request for a change order to the AC containing
6 modifications to their previously submitted plans. Chief among these changes was one which
7 increased the height of the south slope to 44 feet. This application for a change order was not
8 acted upon by the AC, and as a result, was deemed to have been approved as of June 11, 2017.

9 With approval of these plans, grading proceeded apace. It generated significant neighbor
10 complaints, some of which came from an individual, but other complaints were in the form of
11 letters signed by multiple parties. These complaints were addressed to both the AC and the Board
12 of Directors. The most common complaint was the size of the south slope. One complaining
13 neighbor described it as "Hoover Dam." Virtually all of the complaints stated that it was not
14 "harmonious" with the character to Bell Canyon. There is evidence that the approval of the
15 grading plan (and its increase of the height of the south slope) was never publically
16 communicated to the Bell Canyon community.

17 The drumbeat of complaints led the AC and the Board of Directors to investigate claims
18 of overgrading, i.e. that the grading being conducted by the Reingolds was in excess of what was
19 allowed by the approved plans. On June 20, 2017 there was an inspection of the construction
20 site, not by the AC, but by Felix Levitas, an engineering consultant hired by the AC. Mr. Levitas
21 was accompanied by Diane Rossiter, the business manager for Bell Canyon. Mr. Levitas
22 prepared a report (Ex. 182) in which he concluded that the "...slopes, pads and driveway are
23 roughly at the elevations close to proposed...", and that verifications should be done after the
24 rough grading was "...done..."

25 As this was developing, the Reingold grading encountered unexpected bedrock.
26 According to Mr. Reingold, to deal with this pursuant to the then approved plans, would have
27 added 3 months to the grading portion of the project. Mr. Reingold submitted plans for County
28 approval to deal with this short of taking 3 months of additional grading, and also submitted his

1 proposed plans, known as Change Order #2, to the AC on August 2, 2017. These plans were not
2 approved by the AC, although there is no record of a vote on this submission. At this point, the
3 grading portion of the project was not complete, with estimates of the south slope completion
4 ranging from 80-85% complete to "complete" with only cleanup work remaining to be done. The
5 result was that the AC issued a "Stop Work" order on August 29, 2017. Work stopped.

6 The Reingolds reacted to the Stop Work Order with a letter of protest arguing that the
7 grading was not complete, and that the Stop Work order was based on a flawed survey. At the
8 next regularly scheduled executive session of the AC on September 12, 2017, the Reingolds'
9 project was given priority on the agenda of the meeting. The Reingolds were present with their
10 consultant (engineer). The committee ruled that the consultant could be present, but could not
11 speak. An audio recording of the meeting is unintelligible, primarily because multiple people are
12 talking at once (if in court, a reporters nightmare). The written minutes of this meeting are
13 disappointingly brief. The decision was ultimately to keep the Stop Work order in place. There
14 is no record of the vote by the committee members on this issue.

15 The Reingolds submitted a third change order on December 11, 2017, which the AC
16 denied. There is no record of (1) a vote made at a meeting duly held at which a quorum was
17 present, or (2) of an on site inspection by the AC or (3) a report of any inspection by or on behalf
18 of the AC.

19 The Reingolds elected to ask for a reconsideration by the Board of Directors. The
20 ultimate decision was to deny the reconsideration. There is a videotape of the meeting in
21 evidence. It is more informative than the audio of the AC meeting. Nonetheless, there is a lot of
22 audio which was not picked up on the video. At least it establishes that there were no fistfights.

23 The testimony in this case was extensive, and the Court has not undertaken to summarize
24 it all. The Court's task includes avoiding getting lost in the weeds, but at the same time
25 separating the wheat from the chaff. There was plenty of chaff.

26 One of the Reingolds' contentions is that Eric Wolf was the leader of a campaign to
27 defeat the Reingolds' effort to build their home at 9 Wagon based on a personal agenda, and not
28 on the merits of the plans and the project. The basis for this goes back to 2016 when Leon

1 Reingold lodged a complaint with the BCA alleging that Wolf was engaged in self-dealing
2 conduct by using his position on the Board of Directors to extract favors from persons having
3 business before the Board. This dovetails with similar complaints made by Mr. David-Chai, a
4 general contractor with frequent building projects in Bell Canyon, including the Reingolds'
5 project. Mr. Reingold alleged that Wolf confronted him at one point and demanded that Reingold
6 withdraw his complaint, or he would have no success in getting his 9 Wagon project approved.
7 There is testimony from other witnesses who stated that Wolf stated he wanted to stop the
8 Reingold project. Reingold claims that Wolf had secret meetings of a small group whose purpose
9 was to do just that.

10 Reingold was able to prove that there was a group in Bell Canyon, including several
11 Board members, known as the "Wolfpack." The existence of that group was proven by
12 photographs of a group of people wearing T-shirts emblazoned with the term "Wolfpack", and
13 Board minutes where Mr. Wolf moved for the dedication of various facilities and trails to the
14 Wolfpack and other volunteers. Wolf never denied the existence of the Wolfpack, but said they
15 were people with commonly shared ideas and goals for the betterment of Bell Canyon. There
16 was no persuasive testimony or evidence that Mr. Wolf and/or his like minded friends were
17 engaged in a course of conduct whose purpose was to prevent Mr. and Mrs. Reingold from
18 completing their project. Conspiracies are tough to prove under the best of circumstances, and
19 this aspect of the Reingolds' case was not proven to be more likely than not. Mr. Wolf came
20 across during his testimony as having a Type A personality, but that does not lead to the
21 conclusion that the Reingolds want the Court to reach.

22 Not so easily resolved, however, is that the BCA and the AC failed in their legal duties
23 owed to Mr. and Mrs. Reingold. It is well settled that a Board of Directors, such as the directors
24 of a community association such as Bell Canyon, owe certain duties to the membership, and are
25 entitled to the Business Judgment rule. See *Lamden v. La Jolla Shores*, 21 Cal.4th 245, and *Eith*
26 *v. Kettlehut*, 31 Cal.App.5th 1. Succinctly stated, this means that decisions made by a Board of
27 Directors do not have to be perfect. So long as they are acting in good faith, mistakes or errors in
28 judgment which they may make, are not legally actionable. This, however, is an affirmative

1 defense. It is not an immunity. In addition, it does not apply to questions of law, e.g.
2 interpretation of C, C & Rs. Courts decide legal questions.

3 Business Judgment, however, is not the only legal standard that is applicable to the Board
4 of Directors of Bell Canyon. They also have a legal duty imposed on them to act as a fiduciary
5 towards their members. This is a concept frequently applied to the relationship between a lawyer
6 and his/her client, and in other professional relationships. What this means is that the person or
7 entity owing the duty must act with the utmost good faith and in the best interests of the person
8 or entity to whom the duty is owed. Whether such a duty exists is generally a question of law to
9 be decided by a Court. Whether that duty was breached is a question of fact. See *Marzec v.*
10 *Public Employees Retirement System*, 236 Cal.App.4th 889/915. It is here that the Court finds
11 that the conduct of Bell Canyon, acting through the Architectural Committee and the Board of
12 Directors, failed in the duty they owed to Mr. and Mrs. Reingold.

13 Examples of this include the practice of the AC to conduct meetings by e-mail and/or
14 telephone. The governing documents require these meetings to be held at the corporate offices at
15 8 Hackamore, and to be held by a quorum "present." This did not always occur with the
16 explanation by the defendant that voting on matters was frequently held by telephone or e-mails
17 among the committee members for purposes of convenience. Plaintiffs have argued that the
18 decisions that were made in this matter are void or voidable. The decisions of the AC were not in
19 accord with the requirements of its own governing documents. The Court does note that Civil
20 Code section 4900 as argued by Plaintiffs' counsel, applies to the Board of Directors of the
21 associations and not an architectural committee.

22 Of greater significance is what the AC and Board did not do. There has been testimony
23 from several witnesses that the AC and the Board had the obligation to work with a homeowner
24 to work out difficulties and to get a homeowners plans approved. This was testified to by Leon
25 Reingold, who stated that the AC refused to meet with him after they issued the Stop Work order
26 at issue in this litigation. Ray Jadali (a member of the AC) testified that the general rule of the
27 AC was to have consultants meet to work out differences. Peter Camiglia (a member of the AC)
28 testified by deposition, that the job of the AC was to assist the homeowner. Ciedu Chinindu, Bell

1 Canyon's architectural consultant, testified that he wanted to meet with the Reingold consultants,
2 but could not. Steve Kent testified that the role of the AC was to help "owners complete their
3 projects." He could not understand why consultants were not allowed to speak at the meeting of
4 the AC, or why consultants for both sides were not allowed to meet. This "help the homeowner"
5 concept is a critical point to understand.

6 The Stop Work order was issued on August 29, 2017. The basis for this was that the
7 grading exceeded what had been approved in the plans submitted by Mr. Reingold. The Court
8 finds that this was a flawed decision when it was made, and the decision to keep it in place was
9 unreasonable. It was based on a survey done in response to homeowner complaints over the
10 height of the south slope, and the extent of the grading which was taking place. The complaining
11 homeowners had never been advised that the height of the south slope had increased from 16 feet
12 to 44 feet by virtue of the change order which had been approved by default in June of 2017. The
13 survey was commissioned by the AC to see if there was "overgrading," i.e. grading in excess of
14 what was permitted by the approved plans. Those survey results were reviewed by Felix Levitas,
15 a civil engineering consultant hired by the AC. Levitas presented several diagrams to illustrate
16 how the Reingolds' grading exceeded the grading plans. In his trial testimony, however, Levitas
17 stated that his diagrams were only as good as the accuracy of the survey he was working from,
18 which he could not verify, and that the grading was not complete. Levitas testified that
19 compliance with the approved plans could not be determined until the rough grading was
20 complete. The Reingolds had been saying all along that a survey done before the grading was
21 completed was a waste of time. Defendant's expert, Robert Hollingsworth, and plaintiffs' expert,
22 Gregory Axten both testified that if the Reingolds had been allowed to continue the rough
23 grading they could have complied with the approved plans. Nonetheless, the AC, at the
24 suggestion of the corporation's business manager, found that this was sufficient for a Stop Work
25 notice to be issued, and issued it was on August 29, 2017. This was done without any good faith
26 and reasonable effort to meet with the plaintiffs. To meet with the plaintiffs' consultants, to meet
27 and consult with their own consultants, and/or to have the consultants meet amongst themselves.
28 The Reingolds had repeatedly asked for meetings between the consultants. These failures amount

1 to a failure to conduct a reasonable investigation to justify or to support the Stop Work order.
2 The Stop Work order was also issued without a site inspection by the members of the AC. The
3 snowball had started to roll downhill.

4 The matter ultimately proceeded to a Reconsideration before the entire Board of
5 Directors. Mr. Wolf, a director, recused himself from voting based on his previous conflict with
6 Mr. Reingold, but nonetheless played a prominent part in the conduct of the meeting. Mr.
7 Reingold spoke. His consultant was not permitted to speak. The Board voted to deny the
8 reconsideration. Again, no meeting called by the AC or the full Board included consultants from
9 both sides to try to resolve the dispute, or even to listen to the competing evaluations.

10 In open court before opening statements, counsel represented to the Court that the AC
11 had approved a set of plans in January of this year, and that work was ongoing at 9 Wagon. This
12 was not solicited by the Court. It was offered. It is evidence that the issues between the parties
13 were subject to resolution. Someone, however, had to take the laboring oar. Under the existing
14 circumstances, the duty to do that was that of the defendants. They had the fiduciary duty
15 towards the Plaintiffs, and they did not do this at any time up to the issuance of the Stop Work
16 order, nor at any time thereafter. It is the failure to act reasonably and in good faith that the Court
17 finds to be a breach of duty owed by the Defendant towards the Plaintiffs, which entitles the
18 Plaintiffs to a recovery on both of their causes of action.

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1 Damages are in the form of the costs and expenses incurred by virtue of the delay
2 between the Stop Work order in August of 2017, and the resumption of construction activity in
3 January of 2023. Plaintiffs have produced testimony and evidence in that regard, and the Court
4 finds as follows on their various damage claims. The plaintiffs' damage witnesses were Leon
5 Reingold and Richard Rathcke. They have credibly established the following categories of
6 damage:

7	Permit fees for renewed building plans	\$ 211,439.21
8	Increased construction costs resulting from Inflation	\$1,573,625.91
9	and Covid	
10	Interest on the construction deposit	\$ 47,514.15
11	Interest on loans taken out by Plaintiffs	\$ 52,337.26
12		
13	Recurring carrying costs for 9 Wagon	\$ 61,094.07
14		
	TOTAL:	\$1,946,010.60

15 The Court finds that the claim for loss of rental value is speculative, and has not been
16 established by persuasive evidence.

17 To the extent needed, the Court finds that the Reingold project was not "inharmonious"
18 with the development and character of Bell Canyon. "Harmonious" is subjective, although a
19 recognized standard for development in a planned community development. The photographic
20 evidence received in this case shows a wide variety of architectural styles and grading styles in
21 Bell Canyon. These are perhaps not "cacophonous" (as described by one appellate court), but
22 they are sufficiently varied throughout the community to allow the Plaintiffs to complete their
23 project. The maintaining of the Stop Work order was unreasonable and arbitrary, and prevented
24 the Reingolds from completing their project. Photographs taken 18-24 months after work was
25 stopped, and before the installation of any landscaping or hardscaping, show that the slope which
26 was being developed by Mr. Reingold is virtually indistinguishable from its surroundings due to
27 the development of native vegetation.


28 Bell Canyon had a cross-complaint alleging six causes of action. The first five are

1 subsumed in the Court's findings as stated in this Statement of Decision. None of them have
2 been established by a preponderance of the evidence. The sixth cause of action is moot by virtue
3 of the resumption of construction in January of this year.

4 Judgment is in favor of plaintiffs/cross defendants Leon Reingold and Marina Reingold,
5 and against defendant/ cross complainant Bell Canyon Association in the amount of
6 \$1,946,010.60. Plaintiffs are prevailing parties and are entitled to their statutory costs of suit. An
7 award of attorneys fees, if they are recoverable, shall be by noticed motion. Counsel for Plaintiffs
8 is directed to prepare and to submit a form of Judgment.

9 The clerk is directed to give notice.

10
11 Dated: September 8, 2023


HENRY J. WALSH
Judge of the Superior Court

PROOF OF SERVICE
CCP § 1012, 1013a (1), (3) & (4)

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
)

Case Number: 201800510717CUBT

Case Title: Reingold v. Bell Canyon Association, Inc., a California Non Profit Corporation, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF DECISION

On the following named party(ies)

SEE ATTACHED SERVICE LIST

 BY PERSONAL SERVICE: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____ at _____ a.m./p.m.

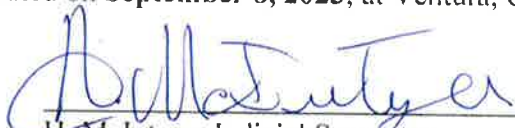
 X **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

 BY FACSIMILE: I caused a courtesy copy of said documents to be sent via facsimile to the interested party at the facsimile number set forth above at __. from telephone number ____.

 BY ELECTRONIC SERVICE (to individual person): By electronically transmitting a copy/courtesy copy of the document(s) listed above to the email address(es) of the person(s) set forth above/ on the attached service list. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **September 8, 2023**, at Ventura, California.

By:


H. McIntyre, Judicial Secretary

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