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### Summary of Diaz v. Ferne, 120 Nev. Adv. Op. 12

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*Diaz v. Ferne*, 120 Nev. Adv. Op. 12, 84 P.3d 664 (Nev. 2004)<sup>1</sup>

## **COVENANTS AND CC & R's—INTERPRETATION AND COMPARISON BETWEEN MOBILE HOME & MANUFACTURED HOME**

### **Summary**

Appeal from a permanent injunction issued by the Fifth Judicial District Court of Nevada barring a family from installing a manufactured home on their lot in a subdivision in Pahrump, Nevada.

### **Disposition**

Reversed. The Nevada Supreme Court held that the CC & R's governing the subdivision did not expressly prohibit manufactured homes on the lots, only mobile homes. The court pointed to language in the Nevada statutes that made distinctions between the two.

### **Factual and Procedural History**

In December 2000, the Diaz family purchased property designated as a "Single-Family Lot"<sup>2</sup> in the Calvada Valley subdivision located in Pahrump, Nevada. The CC & R's restricted the placement, alteration or erection of buildings without the approval of the "Architectural Review Committee" (ARC).

Shortly after purchasing their lot the Diaz family submitted plans to the Pahrump Regional Planning District, requesting permission to build a manufactured home on their lot. Subsequently, the Diaz family received a letter from the Calvada Homeowners Protection Corporation (CHPC) denying their request and stating that they were building "without the approval or disapproval of the ARC."

In a reply letter to the CHPC the Diaz family explained their plans to build a "triple-wide modular home with an attached two-car garage," and again requested approval. The ARC again denied the request but the Diaz family proceeded without approval and had the manufactured home placed on their property. Subsequently, an owner of an adjacent property in the subdivision brought suit to enjoin further construction of the home.

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<sup>1</sup> By Christopher W. Carson

<sup>2</sup> The CC & R's for the Calvada subdivision, filed in June 1987, provided in pertinent part: Lots in the subdivision shall be classified by permitted uses, building requirements and limitations, set-backs and parking requirements for each permitted use classification are as follows...A. Single-Family Lots, 1. Lots of this classification shall be used only for single-family homes, including accessory buildings... F. Mobile Home Lots, 1. Lots of this classification shall be used only for single-family dwellings or mobile homes...

After trial, Fifth District Judge John P. Davis found that the Calvada CC & R's prohibited the Diaz family from building on the lot because their lot was classified as a "Single-Family Lot" which excluded the building of mobile homes on these lots. The district court concluded that "the term mobile home as used in the CC & R's unambiguously includes a manufactured home" and therefore the Diaz family was permanently enjoined from constructing a manufactured home on their lot. The Diaz family appealed.

## **Discussion**

The Diaz's contended that the district court erroneously included the definition of "manufactured home" within the definition of "mobile home." To determine if this was the case, the Nevada Supreme Court first interpreted the Calvada CC & R's by applying the rules of construction governing the interpretation of contracts to the interpretation of restrictive covenants on real property.<sup>3</sup> The court also held since there was no dispute of fact in this instance the CC & R's interpretation is a legal question subject to de novo review.<sup>4</sup>

The court held that the problem in this instance lies in the fact that the Calvada CC & R's do not mention the term "manufactured home" rather only "mobile home." The court concluded there is a difference in both popular meaning and in the Nevada statutes,<sup>5</sup> between a "manufactured home" and "mobile home." Therefore, the CHPC and APC could not prevent the building of "manufactured homes" on "Single-Family Lots" within the Calvada subdivision and the Nevada Supreme Court lifted the injunction.

The court strengthened their holding by pointing to the fact that the statutory language was in effect in 1987 when the CC & R's were filed. Therefore, the Court presumed that the drafters were aware or should have been aware of the distinction between manufactured and mobile homes. If the drafters wished to exclude manufactured homes from "Single-Family Lots" they would have explicitly done so.

The court also pointed to public policy issues that were addressed by the Nevada Legislature when they passed NRS 278.02095<sup>6</sup>, which requires any zoning ordinance relating to a "single-family residence" allow the use of manufactured homes on that site

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<sup>3</sup> Tompkins v. Buttrum Constr. Co., 99 Nev. 142, 144 (1983).

<sup>4</sup> Lorenz v. Beltio, Ltd., 114 Nev. 795, 803 (1988).

<sup>5</sup> Nevada statutes clearly draw a distinction between a manufactured home and a mobile home. NRS 489.113 states:

1. "Manufactured home" means a structure which is: (a) Built on a permanent chassis; (b) Designed to be used with or without a permanent foundation as a dwelling when connected to utilities; (c) Transportable in one or more sections... (2) Built in compliance with the requirements of chapter 461 of the NRS. In contrast, NRS 489.120 defines a "mobile home" as: 1. "Mobile home" means a structure which is: (a) Built on a permanent chassis; (b) Designed to be used with or without a permanent foundation as a dwelling when connected to utilities; and (c) Transportable in one or more sections... 3. The term does not include a recreational park trailer, travel trailer, commercial coach or *manufactured home or any structure built in compliance with the requirements of chapter 461 of the NRS.* Chapter 461 of the NRS is title "Manufactured Buildings" and includes an exception that *does not include mobile home or recreational park trailer* under the definition of a "Manufactured building."

<sup>6</sup> NEV. REV. STAT. 278.02095 (2004).

unless a recorded restrictive covenant prohibits their use. This law was passed to make housing and home ownership of “single-family residences” more feasible for the largest number of residents in the state.

### **Conclusion**

Because the Calvada CC & R’s did not *expressly* prohibit the use of “manufactured homes” only “mobile homes,” both public policy and a strict interpretation of the covenant language<sup>7</sup> leads to the conclusion that the district court injunction was issued in error.

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<sup>7</sup> Dickstein v. Williams, 93 Nev. 605, 608 (1977).