

NOV 24 2015

JAKE CHATTERS
EXECUTIVE OFFICER & CLERK
By T. Hinds, Deputy *JAK*

1 Thomas G. Trost, State Bar No. 151961
2 Gregory L. Maxim, State Bar No. 204242
3 SPROUL TROST LLP
4 3200 Douglas Boulevard, Suite 300
5 Roseville, CA 95661
6 (916) 783-6262 - Main
7 (916) 783-6252 - Facsimile

8 Attorneys for Petitioner Fleur du Lac Estates
9 Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF PLACER - TAHOE CITY BRANCH

12 FLEUR DU LAC ESTATES ASSOCIATION,

13 Petitioner;

14 v.

15 ZARI MANSOURI, and DOES 1-20, inclusive,

16 Respondents.

Case No. T-CV-0001479

~~PROPOSED~~ JUDGMENT

[Code Civ. Proc., § 1287.4]

**FILE BY
FAX**

17 *NOV 17*

18 On ~~October 30~~, 2015, Petitioner Fleur Du Lac Estates Association's verified petition to confirm
19 arbitration award came on regularly for a hearing in Department ⁴⁰~~14~~ of the above-entitled Court. The
20 Court, having considered the petition, the papers filed in connection therewith and oral argument of
21 counsel, entered its order granting the petition to confirm the arbitration award.

22 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT JUDGMENT BE
23 ENTERED AS FOLLOWS:

- 24 1. The Final Arbitration Award and Order Granting Petitioner Fleur du Lac Estates
25 Association's Motion for Attorneys' Fees and Costs, attached hereto as Attachment A, is
26 confirmed in its entirety and incorporated herein;
- 27 2. Judgment is entered in favor of Petitioner Fleur du Lac Estates Association, and against
28 Respondent Zari Mansouri incorporating and consistent with the attached Final
Arbitration Award and Order, and this Court's July 15, 2014 Ruling On Submitted Matter
(attached hereto as Attachment B);

Case No. T-CV-0001479

3. Petitioner Fleur du Lac Estates Association is awarded \$501,121 in attorneys' fees and \$93,861 in costs pursuant to the final arbitration award.

Michael A. Jacques

Dated: NOV 24 2015

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTACHMENT A

1 Judge William Cahill (Ret.)
2 JAMS
3 2 Embarcadero Ctr. 15th Flr
4 San Francisco, CA 94111
5 Telephone: 415-982-5267

6 Arbitrator

7 JAMS ARBITRATION

8
9 FLEUR DU LAC ESTATES ASSOCIATION,

Case No. 1100067133

10 Petitioner;

**FINAL ARBITRATION AWARD AND
ORDER GRANTING PETITIONER FLEUR
DU LAC ESTATES ASSOCIATION'S
MOTION FOR ATTORNEYS' FEES AND
COSTS**

11 v.

12 ZARI MANSOURI,

13 Respondent.

14 The Panel, having read and considered the notice of motion, motion, memorandum of points and
15 authorities, request for judicial notice, declaration of Thomas Trost, and all other evidence presented by
16 Petitioner Fleur du Lac Estates Association ("Association"), and having reviewed any opposing papers
17 and evidence by Respondent Zari Mansouri ("Ms. Mansouri"), and having heard the arguments of
18 counsel and good cause appearing therefore¹, the Panel hereby reaffirms and incorporates its findings and
19 orders from its August 4, 2014 Order Re: Ruling Re Patio Fire Pit and makes the following findings and
20 orders with respect to the Association's motion for attorneys' fees and costs:

21 The Panel finds as follows:

22 I. The Association is the prevailing party to this arbitration proceeding; and

23
24 ¹ Justice Rick Sims withdrew as arbitrator from the panel as of January 22, 2013. Since his withdrawal,
25 the parties did not object to the two remaining arbitrators proceeding with the case and the orders,
26 including an in-person site visit by the arbitrators, all counsel and clients, and the August 4 Order.
27 During the telephonic hearing on this Motion for Attorneys' Fees and Costs, counsel for Ms. Mansouri
28 objected for the first time to having the two arbitrators deciding this motion. The Association had no
objection and asked that the arbitrators decide the motion. Judge Cahill and Judge Ramirez found Ms.
Mansouri's objection to be without merit because it had been waived since it had not been raised at all
following the January 2013 withdrawal. The two arbitrators agreed to issue this Order Granting Fees and
costs and therefore Ms. Mansouri's objection is overruled.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

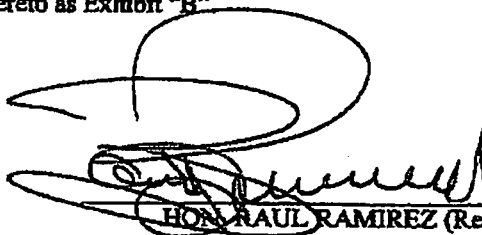
2. The Association is entitled to recover its reasonable attorneys' fees and costs incurred in connection with the arbitration pursuant to the Association's Governing Documents as well as pursuant to the Davis-Stirling Act.

The Panel orders and enters final judgment/award as follows:

1. The Association's motion for attorneys' fees and costs is GRANTED;
2. Ms. Mansouri shall pay and otherwise reimburse the Association \$93,861 in costs; and
3. Ms. Mansouri shall pay and otherwise reimburse the Association \$\$501,121 as reasonable attorneys' fees incurred by the Association.
4. The Panel affirms and incorporates its findings from its October 12, 2012 Arbitration Award, attached hereto as Exhibit "A".
5. The Panel affirms and incorporates its findings from its Order re: Ruling re Patio Fire Pit dated August 4, 2014, attached hereto as Exhibit "B"

IT IS SO ORDERED.

DATE: 12.8.14


HON. RAUL RAMIREZ (Ret.)

DATE: 12/9/2014


HON. WILLIAM CAHILL (Ret.)

Exhibit A

JAMS ARBITRATION
REFERENCE NO. 1100067133

FLEUR DU LAC ESTATES HOA,

Claimant

And
ZARI MANSOURI,

Respondent

ORDER GRANTING CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT AND FIRST INTERIM
AWARD

This claim in arbitration was filed by Claimant Fleur du Lac Estates HOA ("Association") against Respondent Zari Mansouri, a homeowner and member of the Association, arising out of the Association's claim that Ms. Mansouri failed to receive the requisite approval from the Association's Architectural Control Committee ("ACC") and membership before she commenced construction to her patio and fire pit as required under the Association's CC&Rs and under the Davis-Stirling Act. Ms. Mansouri disputes the Association's challenge, contending that she received approval from the Association's agents, who were operating with authority to act on behalf of the ACC and the Association and/or the membership. This panel has jurisdiction over this matter pursuant to California law and section 16.10 of the Association's CC&Rs which provides in relevant part that "[i]f the Association and one or more Owners are unable to agree on the meaning or effect of any part of this Declaration, such dispute shall be conclusively settled by arbitration."

The Association filed its motion for summary judgment in this arbitration on September 24, 2012. Pursuant to our May 14, 2012 Scheduling Order No. 3, any opposition was to be filed no later than October 4, 2012. No formal opposition was filed.

The motion for summary judgment was heard by the Arbitrators on October 9, 2012. Attorney Thomas G. Trost appeared for Claimant and Respondent Zari Mansouri represented herself. At the outset of the hearing, Ms. Mansouri renewed her request, for the third time, to continue the hearing on the motion for summary judgment and the arbitration hearing set for October 22, 2012. The Arbitrators unanimously denied the continuance motion.

After full consideration of Claimant's motion, brief, declarations, evidence, and separate statement, and Respondent's positions, the Panel finds unanimously that there is no triable issue of material fact to refute the meaning or effect of the requirements under the CC&Rs as represented by the Association and that Respondent Mansouri failed to comply with those requirements relating to the Respondent's patio and fire pit construction under the terms and provisions of the CC&Rs and the Davis-

Sterling Act. Therefore, we find that the Association is entitled to an award determining its rights under the CC&Rs and Davis-Sterling Act as a matter of law.

THEREFORE, IT IS ORDERED that Claimant's motion for summary judgment is GRANTED, and this Panel orders as follows:

1. That Ms. Mansouri's activities relating to the construction of her present patio were taken in violation of and are contrary to the requirements of sections 5.2.13, 9.2, and 16.11 of the Association's CC&Rs and Civil Code section 1363.07; that Ms. Mansouri is entitled to a patio no greater than 518 square feet as established prior to her recent expansion and that she presently has expanded her patio to 752.2 square feet.

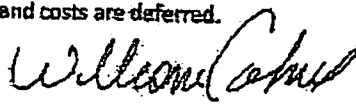
2. That Respondent Ms. Mansouri shall resubmit a revised set of as-built plans within 30 days of issuance of this order to the ACC for review. If the ACC, in its discretion pursuant to section 9.2 et seq of the CC&Rs, approves these revised plans, they shall be submitted to a vote of the membership of the Association pursuant to the requirements of section 5.2.13 of the CC&Rs and section 1363.07 of the Civil Code.

3. In the event that Ms. Mansouri fails to comply with the requirements of the preceding paragraph or if she fails to obtain approval from the ACC and 2/3 of the membership for her revised plans, that an order will issue authorizing the Association to demolish, remove, and take out the additional 252.2 square feet of patio coverage added by the expansion of Ms. Mansouri's patio and construction of her fire pit. The Association shall have such reasonable access to Ms. Mansouri's property as is necessary to reinstate the configuration, size, and materials of Unit 2's patio as it existed prior to Ms. Mansouri's 2007-2008 construction, but in no case shall the patio be larger than 518 square feet. Upon completion of the removal of the patio expansion and fire pit, the Association shall be entitled to reimbursement from Ms. Mansouri for all reasonable costs associated with the removal and reinstatement of Unit 2's patio.

4. The Arbitrators shall retain jurisdiction of this dispute until it is finally resolved.

5. All claims for attorneys fees and costs are deferred.

DATE: 10/10/2012



HON. WILLIAM CAHILL (Ret.)

DATE: _____

HON. RAUL RAMIREZ (Ret.)

DATE: _____

HON. RICK SIMS (Ret.)

Sterling Act. Therefore, we find that the Association is entitled to an award determining its rights under the CC&Rs and Davis-Sterling Act as a matter of law.

THEREFORE, IT IS ORDERED that Claimant's motion for summary judgment is GRANTED, and this Panel orders as follows:

1. That Ms. Mansouri's activities relating to the construction of her present patio were taken in violation of and are contrary to the requirements of sections 5.2.13, 9.2, and 16.11 of the Association's CC&Rs and Civil Code section 1363.07; that Ms. Mansouri is entitled to a patio no greater than 518 square feet as established prior to her recent expansion and that she presently has expanded her patio to 752.2 square feet.

2. That Respondent Ms. Mansouri shall resubmit a revised set of as-built plans within 30 days of issuance of this order to the ACC for review. If the ACC, in its discretion pursuant to section 9.2 et seq of the CC&Rs, approves these revised plans, they shall be submitted to a vote of the membership of the Association pursuant to the requirements of section 5.2.13 of the CC&Rs and section 1363.07 of the Civil Code.

3. In the event that Ms. Mansouri fails to comply with the requirements of the preceding paragraph or if she fails to obtain approval from the ACC and 2/3 of the membership for her revised plans, that an order will issue authorizing the Association to demolish, remove, and take out the additional 234.2 square feet of patio coverage added by the expansion of Ms. Mansouri's patio and construction of her fire pit. The Association shall have such reasonable access to Ms. Mansouri's property as is necessary to reinstate the configuration, size, and materials of Unit 2's patio as it existed prior to Ms. Mansouri's 2007-2008 construction, but in no case shall the patio be larger than 518 square feet. Upon completion of the removal of the patio expansion and fire pit, the Association shall be entitled to reimbursement from Ms. Mansouri for all reasonable costs associated with the removal and reinstatement of Unit 2's patio.

4. The Arbitrators shall retain jurisdiction of this dispute until it is finally resolved.

5. All claims for attorneys fees and costs are deferred.

DATE: _____

DATE: 10/12/12

DATE: 10/12/12

HON. WILLIAM CAMILL (Ret.)

HON. RAUL P. GONZALEZ (Ret.)

Rick Sims (cc)
HON. RICK SIMS (Ret.)

Exhibit B

Hon. William J. Cahill (Ret.)
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111
Phone: 415-774-2662
Fax: 415-982-5287
Email: julixon@jamsadr.com

JAMS REFERENCE NO. 1100067133

FLEUR DU LAC ESTATES
ASSOCIATION

Claimant;

v.

ZARI MANSOURI,

Respondent.

ORDER RE: RULING RE PATIO
FIRE PIT

On May 10, 2014 the panel issued an order whereby the parties, their counsel of record and/or their construction consultants would meet with Judge Ramirez and Judge Cahill at Respondent's Unit, located at 4000 West Lake Blvd/ #2, Homewood, CA to conduct further proceedings.

The meeting occurred on July 20, 2014 with Christopher Sullivan appearing for Respondent and Thomas Trost appearing for Claimant. Ms. Mansouri was present with her consultants and members of the Association and its consultant was also present. Judge Ramirez and Judge Cahill listened to all parties and took the matter under

submission.

Pursuant to this panel's October 12, 2012 Arbitration Award and the United States Bankruptcy Court's August 26, 2013 Granting Claimant's Motion for Relief from Automatic Stay, the panel hereby reaffirms and incorporates its findings from its Arbitration Order and Orders the Following:

Attached to this Order as Exhibit A is a diagram of the existing Patio, Footprint of the Rock Base of Granite Covered Bench, the lower level of the Stone Patio, the Granite Fire Pit, Footprint of Rock Base of Granite Covered Wall and the existing Stone Patio.

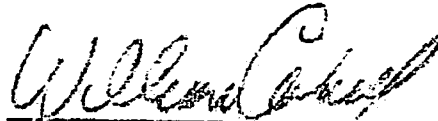
1. The Existing Stone Patio shown on the diagram as the 518 SQ. FT. section and the 254.5 Sq.Ft. section shall remain in place and not be removed ("Existing Patio").
2. The Granite Fire Pit, Stone Patio (Lower Level) shall be demolished in pursuant to the October 12, 2012 Arbitration Award.
3. As to the Rock Base of Granite Covered Wall, all portions of that wall that are east of the Stone Steps shall be demolished pursuant to the October 12, 2012 Arbitration Award.
4. As to the Rock Base of Granite Covered Bench, all portions of that Bench extending to the east of the Stone Patio border shall be demolished. All other portions of that Bench can remain.
5. It was agreed at the in site hearing that Ms. Mansouri, if she applies for a fire pit to be constructed on the Existing Patio, that application will be approved as long as it is in conformance with the Association guidelines.
6. Respondent has 30 days from the date of this order to complete the demolition

as described above. After that date, the Association is authorized to demolish, remove and take out all the material described above. Claimant and Respondent shall coordinate with each other and Ms. Mansouri shall provide reasonable access to her property as is needed

7. If the Association is to remove the items described above, the Association shall be entitled to reimbursement from Respondent for all reasonable fees and costs associated with the Association's removal of the items.
8. Any motion for attorneys' fees and costs shall be filed within 60 days of this order.

IT IS SO ORDERED.

Dated: August 4, 2014



JUDGE WILLIAM CAHILL (RET.)

On behalf of the Panel

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Fleur du Lac Estates HOA vs. Mansouri, Zari
Reference No. 1100067133

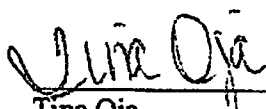
I, Tina Oja, not a party to the within action, hereby declare that on December 09, 2014 I served the attached FINAL ARBITRATION AWARD AND ORDER GRANTING POTITIONER FLEUR DU LAC ESTATES ASSOCIATION'S MOTION FOR ATTORNEYS' FEES AND COSTS on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Francisco, CALIFORNIA, addressed as follows:

Thomas G. Trost Esq.
Greg Maxim Esq.
Sproul Trost LLP
3200 Douglas Blvd.
Suite 300
Roseville, CA 95661
Phone: 916-783-6262
ttrost@sproullaw.com
gmaxim@sproullaw.com
Parties Represented:
Fleur du Lac Estates HOA

Raul A. Ramirez (Ret.)
Ramirez Arbitration & Mediation Service
400 Capitol Mall
11th Floor
Sacramento, CA 95814
Phone: 916-558-6185
judgeramirez@ramsadr.com
Parties Represented:

Christopher D. Sullivan Esq.
Diamond McCarthy LLP
150 California St.
Ste 2200
San Francisco, CA 94111
Phone: 415-692-5200
CSullivan@diamondmccarthy.com
Parties Represented:
Zari Mansouri

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Francisco, CALIFORNIA on December 09, 2014.


Tina Oja
toja@jamsadr.com

ATTACHMENT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

FILED
Superior Court of California
County of Placer

JUL 15 2014

Jake Chatters
Executive Officer & Clerk
By: T. Buchanan, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

FLEUR DU LAC ESTATES
ASSOCIATION,

Plaintiff;

v.

ZARI MANSOURI,

Defendant.

Case No.: T-CV-0001479

RULING ON SUBMITTED
MATTER

Plaintiff Fleur du Lac Estates Association's motion for attorney fees came regularly before the court May 30, 2014, 9:30 a.m., in Department 14, Commissioner John Ross presiding. Thomas G. Trost, Esq., appeared by telephone for plaintiff; Christopher D. Sullivan, Esq., appeared for defendant Zari Mansouri. The court issued a tentative ruling May 29, 2014, and at the May 30 hearing received oral argument from counsel. Having considered the filed submissions and the argument of counsel, the court adopts its tentative ruling as the final ruling on the motion for attorney fees, as follows:

Ruling on Motion

Plaintiff Fleur du Lac Estates Association's motions for attorney fees is granted.

As a preliminary matter, defendant's request to excuse the late filing and service of her opposition is granted. The court has considered

1 defendant's arguments and determined the motion should be granted
2 notwithstanding the opposition. Plaintiff appears to have been able to
3 adequately address all arguments advanced by defendant, notwithstanding
4 late receipt of the opposition.

5 California Rules of Court 8.278 governs the award of costs on appeal.
6 The rule provides for the costs itemized under subdivision (d)(1), and
7 provides that attorney fees may be sought "under rule 3.1702" when costs
8 on appeal have been awarded. *Id.* at (d)(2). Recoverable attorney fees in
9 superior court civil cases are considered costs. Cal. Code of Civ. Proc. §§
10 1032, 1033.5(a)(10). Here, costs are awardable both under the CC&Rs (the
11 parties' governing contract) and under statute.

12 The motion for attorney fees is not premature. Although the fees may
13 apparently be sought later in the litigation (see C.R.C. 3.1702(b)), defendant
14 has not shown that plaintiff is precluded from seeking fees now.

15 "The party prevailing in the Court of Appeal in a civil case . . . is
16 entitled to costs on appeal." C.R.C. 8.278(a)(1). Fleur du Lac is the
17 prevailing party on the most recent appeal. *Id.* at (a)(2). The appeal costs
18 award, mandated by 8.278(b)(2), allows for the present motion for attorney
19 fees. In Nimmagadda v. Krishnamurthy (1992) 3 Cal.App.4th 1505, the
20 matter proceeded to a jury verdict in the trial court. A new trial motion was
21 granted on the issue of damages, and defendant appealed. The COA
22 affirmed the new trial order, directing plaintiffs to recover costs on appeal.
23 Requested costs included attorney fees, which were awarded by the trial
24 court in a contingent order. Defendants' subsequent appeal of the fees
25 order was dismissed because of the contingent (non-final) nature of the fees
26 award, not because fees could not be awarded because the underlying case
27 had not finally concluded.

28 Nor is the fee request prevented by the law of the case as established
29 in Fleu du Lac Estates v. Mansouri (2012) 205 Cal.App.4th 249, the so-called
30 "Mansouri II" appeal. There, defendant's appeal of a motion for
31

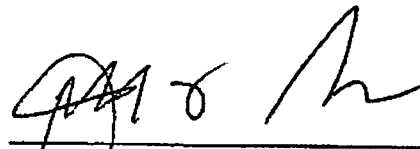
1 reconsideration did not constitute a final order after judgment, and so the
2 appeal was dismissed. The issue of the timeliness of an interim fees request
3 for attorney fees incurred litigating an appeal while the underlying case was
4 not resolved was not raised and was not before the court. (Indeed,
5 defendant's fee motion had been denied as untimely because it was brought
6 too late after conclusion of the appeal. The appellate decision in no way
7 reaches whether this request is too early.)

8 The requested fees are all related to the appeal and are recoverable
9 under both the CC&Rs and by statute. The CC&R language broadly
10 encompasses all disputes between the parties related to the CC&Rs,
11 including the underlying case here and the most recent appeal. Plaintiff's
12 litigation in the bankruptcy court is directly related to the appeal and falls
13 well within the CC&Rs. The Ninth Circuit case cited by defendant, In re
14 Johnson (9th Cir. 1985) 756 F.2d 738, is inapposite: Ninth Circuit decisions
15 are not binding authority on this court, and that case involved an award of
16 fees by the bankruptcy court *within* a relief from stay action which does not
17 encompass contractual attorney fee claims (Johnson, supra, 756 F.2d at
18 740-741). Nothing in Johnson prevents plaintiff from an award of fees in
19 this forum.

20 Because the requested fees are all directly related to defendant's last,
21 unsuccessful appeal, a fees award is appropriate even though some issues
22 remain outstanding in the arbitration. As indicated above, the motion is
23 granted.

24 IT IS SO ORDERED.

25 DATED: July 15, 2014



Hon. John Ross
Commissioner of the Superior Court
Judge pro tempore

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013A(4))

Case no: TCV 1479

Case name: Fleur Du Lac Estates Association v Mansouri, Zari

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this case.

I mailed copies of the document(s) indicated below:

RULING ON SUBMITTED MATTER

True copies of the documents were mailed following standard practices in a sealed envelope with postage fully prepaid, addressed as follows:

Christopher D Sullivan
150 California St. 2200
San Francisco, CA 94111

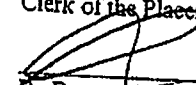
Gregory L Maxim
3200 Douglas Blvd. #300
Roseville, CA 95661



I am readily familiar with the court's business practices for collecting and processing correspondence for mailing; pursuant to those practices, these documents are delivered to the US Postal Service.

On 7-22-14, in Placer County, California.

Jake Chatters
Clerk of the Placer County Superior Court


By Deputy Clerk: T DUCHARME