Appellate Case No.: G055884
Superior Court Case No.: 30-2014-00714844-CU-OR-CJC

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT – DIVISION THREE

DAN RICHARDSON, ET AL.,
Plaintiffs and Respondents,

v.

HUNTINGTON PACIFIC BEACH HOUSE CONDOMINIUM ASSOCIATION,
Defendant and Appellant.

From the Superior Court of California, Orange County
The Honorable James L. Crandall

APPLICATION BY COMMUNITY ASSOCIATIONS INSTITUTE TO FILE AMICUS CURIAE BRIEF

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APPLICATION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT, DIVISION THREE:

I. APPLICATION TO FILE AMICUS BRIEF

Pursuant to California Rules of Court Rule 8.8220(c), the undersigned, on behalf of the Community Associations Institute ("CAI") hereby applies for leave to file its proposed Amicus Curiae Brief in support of Appellant Huntington Pacific Beach House Condominium Association (hereinafter, "Association"). CAI's purpose is to provide additional perspective and information to the Court as it considers whether the trial court's strict construction of California Civil Code section 4600, a statute requiring the special approval of the membership (by supermajority vote) for the conversion of certain common areas to the exclusive use of individual owners, was applied correctly. CAI respectfully submits the statute was misconstrued and applied in a manner which unduly abrogated the discretion otherwise accorded the governing boards of homeowner associations to approve routine architectural improvement applications involving the perimeter walls and roof enclosing an airspace condominium.

Civil Code section 4600 was enacted to protect the common area lands and property of a common interest development **which are otherwise accessible and generally useable by the population of an association**

from being given to individual owners for their exclusive use without a supermajority homeowner vote. At the same time, the decisions of the governing boards regarding architectural improvement applications (including those in airspace condominiums which typically define the perimeter walls and roof as common area enclosing an individual airspace unit) are generally entitled to judicial deference. The question presented here is how to reconcile both the letter and spirit of Civil Code section 4600, which the accompanying legislative history makes clear was to prevent secret "common area land give-aways," with the well-settled principles of giving judicial deference to association decisions concerning exterior architectural improvement applications. If a homeowner supermajority vote requirement is to apply to the type of architectural improvement application at issue in this proceeding, merely because the modest architectural improvement approved by the Board was to convert a window to a door in a perimeter wall defined as common area in the airspace condominium, that would represent a significant change in the law which, as CAI briefs separately, was not the Legislature's intent in enacting Civil Code section 4600.

CAI respectfully submits that these principles of judicial deference should still apply to such applications for architectural improvements even where, as here, the perimeter walls and roof of the unit requesting permission to make the improvements resulting in a modest reduction

(here, five square feet of vertical wall space under a window) are technically defined as "common area." The statutory carve-out at California Civil Code section 4600, subdivision (b)(3)(E) from the membership vote requirements for alteration of common areas which are inaccessible and not of general use to the membership at large was the Legislature's recognition of the many different circumstances where, as here, a supermajority vote of the membership should not be required.

As set forth below, CAI represents the interests of thousands of homeowners and community associations impacted by the substantive legal issue currently before this Court. Its proposed amicus curiae brief, submitted herewith, is intended to be helpful to the Court on the question of how to balance Civil Code section 4600 with the well-settled principles of judicial deference to be accorded to homeowner association concerning routine architectural improvement applications, which is a matter of great public importance to thousands of community associations throughout the State of California. Subjecting all such architectural applications in airspace condominiums to the rigors of a supermajority membership vote would create havoc for community associations, for it would set an unreasonable impediment for what should be a straightforward internal governance process. The Legislature did not intend to disrupt that otherwise straightforward architectural improvement review process for airspace condominiums when it enacted Civil Code section 4600.

Amicus Curiae hereby certifies under the provisions of California Rules of Court, Rule 8.200(c)(3)(A), that no party or counsel for any party authored the proposed brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. Amicus Curiae further certifies under Rule 8.200(c)(3)(B), that no person or entity other than amicus curiae and its counsel made any monetary contribution intended to fund the preparation or submission of the brief.

II. ISSUE PRESENTED

Did the Association's Board of Directors act within the scope of its authority under the Association's governing documents and California law when it approved, without seeking 67 percent homeowner approval under Civil Code section 4600, a homeowner's application for approval of a myriad exterior architectural modifications which it deemed consistent with the architectural standards established for the community including the replacement of an existing window with a door in the unit's perimeter wall?

III. THE AMICUS CURIAE

The Community Associations Institute ("CAI") was organized in 1973 through the joint efforts of the Urban Land Institute, the National Association of Home Builders, the U.S. League of Savings and Loan Associations, the Veterans Administration, the U.S. Department of Housing and Urban Development, twenty-three builders and developers and a

number of leading community association professionals, who sought to create a national organization to provide education and leadership in the community association housing industry which was growing rapidly at that time.

Today, CAI is an international organization, with representation throughout the United States of America, including California, created for the purpose of providing information, education, resources and advocacy for community association leaders, members and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI's more than 40,000 members include homeowners, board members serving on homeowner associations governing common interest developments, association managers, community management firms, and other professionals who provide services to community associations.

CAI is the largest organization of its kind, serving more than 70 million homeowners who live in more than 344,500 community associations in the United States. CAI has over 60 chapters, including 8 chapters in California. Approximately 9,160,000 Californians live in 3,490,000 homes in 45,400 community associations. These residents pay $12.4 billion a year to maintain their communities. These costs would otherwise fall to the local government.

Representing these owners, community associations, and industry professionals, CAI is actively engaged in the community association industry in proposing and supporting legislation involving community associations, and has been instrumental in the development of the law and regulations impacting community associations. In California, among other things, CAI's purpose is to encourage and promote consistency of court action, and to ensure that changes in the law by legislation, voter initiative, and court action, comport with the Davis Stirling Act and the many court cases arising out of the Davis Stirling Act.

CAI has participated in numerous cases involving issues unique to the community association industry, and is deeply committed to providing information to help inform the courts on issues of wide-spread importance before them. To that end, the specific purpose and mission of CAI – California is to provide education and resources to California residential condominium, cooperative, and homeowner associations, as well as to represent their interests and the interests of California community association members, on issues of legal importance, such as is presented by the case herein on appeal.

IV. THE INTEREST OF AMICI

Given the prevalence of community associations throughout the State of California, the issues presented in this case implicate the rights of thousands of homeowners and homeowner associations throughout

California in connection with any application to make architectural changes to the exterior of an air space condominium unit. To the extent this case presents the issue of whether and to what extent a community association's board of directors still has the discretion to approve those changes in an airspace condominium, or whether all or most of such changes will now need to be submitted for a super majority vote of the membership under Civil Code section 4600 in any air space condominium project (since the walls and roofs of most airspace condominiums are defined as "common area") the resolution of this case will have a direct and profound impact on homeowners and community associations state-wide in connection with the pursuit of those architectural improvements.

V. NEED FOR FURTHER BRIEFING

CAI is familiar with the issues before this Honorable Court and the scope of that presentation. CAI respectfully submits that further briefing is necessary to address matters not fully briefed by the parties. Specifically, CAI proposes to brief whether Civil Code section 4600, legislation enacted for the express purpose of precluding secret "giveaways" of common area lands which are generally useable and otherwise accessible to all other owners, was intended to also restrict the discretion of the governing boards of community associations to approve -- without seeking a supermajority homeowner approval -- homeowner requests for permission to make modifications to the exterior walls or roof enclosing a unit in airspace

condominiums. CAI respectfully submits that a review of the legislative history and purpose in enacting Civil Code section 4600 makes it clear that the trial court erred in the proceeding below when it concluded the Association's Board violated Civil Code section 4600 merely by approving, without seeking 67 percent super majority homeowner approval, a homeowner's application to convert a window into a door in the perimeter wall enclosing the owner's air space condominium unit. The small portion of the exterior wall affected by the Association's architectural modification approval, although defined as common area, is neither the type of common area land contemplated by the Legislature when it enacted Civil Code section 4600 in the first place, nor is it common area which is generally accessible to and of general use to the membership at large of the association. Indeed, the small portion of vertical wall space under the window at issue here is exactly that which the Legislature expressly excepted from the membership vote requirement under Civil Code section 4600, subdivision (b)(3)(E). As such, the trial court erred in concluding the otherwise routine architectural modification request to convert a window to a door (modifying less than five square feet of the perimeter wall of an individual unit directly below an existing window in order to accommodate a new door) in a manner consistent with other neighboring properties required a supermajority homeowner approval process. This case provides an opportunity for much-needed clarification of the contours of the

supermajority vote requirement specified under Civil Code section 4600, and how to apply the statute in a manner consistent with the well-settled principles of judicial deference accorded to the governing bodies of community associations in connection with architectural modification requests.

CAI has timely filed this application, in accordance with the extension granted by this Court on December 21, 2018 (to January 7, 2019). Given the importance of the issues and the need for further briefing, CAI respectfully submits herewith its Amicus brief for this Honorable Court's consideration.

Dated: January 7, 2019

EPSTEN GRINNELL & HOWELL, APC

By: _____

Anne L. Rauch
Attorneys for Amicus Curiae
COMMUNITY ASSOCIATIONS INSTITUTE

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COMMUNITY ASSOCIATIONS INSTITUTE'S AMICUS CURIAE BRIEF

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I.
INTRODUCTION

In 2005, responding to "specific instances where residents have been allowed exclusive use of common CID land," the California Legislature enacted what is now California Civil Code section 4600[1]. (See accompanying Motion for Judicial Notice.) Subject to an important exception relevant here, section 4600 now requires a 67 percent homeowner association membership approval before an association's board of directors may transfer the exclusive use of certain common areas to an individual owner. Section 4600, subdivision (b)(3)(E) specifically excepts from the extraordinary supermajority membership vote the conversion of "any common area that is generally inaccessible and not of general use to the membership at large of the association."

The laudable purpose of the statute is evident in connection with common area lands or property accessible to and of use to the general homeowner population. As detailed in the accompanying Motion for Judicial Notice of the legislative history behind section 4600, the statute appropriately ensures that the so-called "land allowance" practice, which the author of the bill criticized as transfers of common areas to individual owners "benefit[ting] a select few at the expense of the community," are put to the rigors of a supermajority homeowner vote before such commonly

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[1] Unless otherwise specified, all further statutory references are to the California Civil Code.

held property is appropriated to the exclusive use of a single owner (or fewer than all owners). However, the express exception carved out for common areas which are inaccessible and not of general use to the membership at large was the Legislature's recognition that the reach of the statute must not be so broad so as swallow the equally laudable policy behind, for example, principles of judicial deference ordinarily given to the architectural decisions of a homeowner association's governing board over the exterior walls and roofs enclosing an individual airspace condominium unit – which are not of general use to the membership at large.

Here, the trial court's refusal to recognize the exception from the supermajority membership approval requirement for proposed improvements to common areas which are inaccessible and not of general use to the membership at large created a slippery slope never intended by the Legislature. Under the trial court's self-described "hypertechnical" interpretation of section 4600, any Association approval to modify the perimeter walls and roofs enclosing an airspace unit would likely require a membership vote (or the Association would risk being sued) if, for example, the architectural application enlarged any window or door opening in the perimeter walls, added a sky light, or did anything which even slightly reduced, changed, or rearranged the square footage of the perimeter walls and roofs enclosing the airspace condominium unit which is the subject of the application.

This does nothing to further the legislative intent behind the statute which was to preclude secret land grabs of otherwise accessible and generally useful common area. The trial court's overly narrow and hyper-technical interpretation of section 4600, if broadly applied, would cause the wheels of thousands of otherwise efficiently operating condominium projects to come to a screeching halt where architectural modification requests in airspace condominium projects are concerned. It is neither practical, nor required under section 4600, to require a supermajority homeowner vote to approve any and all exterior architectural modification requests in air space condominiums which may reduce by square inches or feet the wall space. Yet, that is the effective result of the trial court's decision.

II.
THE COMMON AREA PERIMETER WALLS AND ROOFS ENCLOSING AN INDIVIDUAL AIRSPACE CONDOMINIUM UNIT ARE NOT "ACCESSIBLE AND OF GENENERAL USE TO THE MEMBERSHIP AT LARGE"

The trial court's trouble with the Association's approval of the homeowner architectural improvement application at issue below was rooted in a concern that **any** reduction, however slight or de minimus, of the square footage of the perimeter walls enclosing an individual unit, because defined as "common area" under the condominium plan, triggered the supermajority homeowner vote requirement under section 4600. (Reporter's Transcript on Appeal "R.T." 161:21-164:15.) Applying that

hypertechnical analysis here, the trial court found the Association should have put the owner's request to convert a window to a door to a supermajority membership vote under section 4600. (Id.) Following this logic, any request to install a skylight in the roof, any architectural modification request to enlarge or add windows to enhance a view, or similarly improve the exterior walls or roof of the unit, would be subject to the rigors of such a vote. Indeed, the court's self-described "hyper-technical" interpretation of section 4600 would preclude even emergency window replacements if it reduced the wall space, because the trial court's analysis was that **any** reduction in the wall space would trigger the membership vote requirement under Section 4600 -- no matter how small or insignificant the reduction! (Id.)

This Court should reverse, and explain that such a hypertechnical application of the statute was not intended by the Legislature and would undermine decades of case law contouring the discretion to be accorded the governing boards for homeowner associations concerning internal governance issues such as architectural improvement modification requests. It creates new and unintended impediments to real property improvement within airspace condominiums not countenanced by the Legislature, when it enacted Civil Code section 4600 to curb secret land grabs by select owners of common area that is accessible and of general use to the membership at large.

The definition of common area in common interest developments recognized in California varies depending on the type of subdivision. In planned developments, the separate interests are generally individual lots which may include the entirety of a structure and the common areas are discrete properties (e.g., walkways, roadways) in which all owners have either an easement or fee interest the common property (open spaces, streets and walkways, and commonly owned and enjoyed recreational facilities). (*Cf Cheveldave v. Tri Palm Unified Owners Association* (2018) 27 Cal.App.5th 1202.) It is such generally accessible common area, which is of general use to the membership at large, which the Legislature sought to protect against unilateral decisions to deprive the membership of the use by converting that open and accessible common area to the exclusive use of a single or few owners without a super majority membership approval. (See accompanying Motion for Judicial Reference.)

On the other hand, in airspace condominiums the separate interest unit is only the airspace within a defined area of a commonly owned building. In such airspace condominiums, the common areas -- as they do at Huntington Pacific Beach Association -- can include the structural walls and roof of the buildings *as well as* common area land (open spaces, roads, walkways) similar to that of planned developments. (*Marina Green Homeowners Assn. v. State Farm Fire & Casualty Co.* (1994) 25 Cal.App.4th 200, 202-203.)

It is that broad definition of common area including the perimeter walls and roofs of a structure in an airspace condominium which created the tension apparently perceived by the trial court between the well-settled rules governing an Association's power to approve exterior renovation requests under the architectural restrictions of a recorded declaration for a common interest development, and the statutory restriction on the Board's power to make those decisions without a supermajority membership vote under Civil Code section 4600.

The trial court concluded, without any analysis whatsoever, that the perimeter walls enclosing the individual unit were of use to the general membership at large even though no other neighbor could use that small portion under the window as a practical matter. (R.T. 160:1-12.) However, this cannot be the type of accessibility and "general usefulness" to the membership at large contemplated by section 4600. Indeed, no other owner except the owner of the separate interest seeking permission to make the architectural improvements could ever hang a sign from that portion of the wall, touch the interior of that portion of the wall, or apply for permission to make modifications to that portion of the wall. It is not the type of common area which could reasonably be described as "of general use to the membership at large." The trial court's conclusion that the Association violated Section 4600 by approving the owner's routine architectural

modification request, without circulating it for a supermajority homeowner vote to approve it, was in error.

As the underlying case demonstrates, well-intentioned legislation can be taken too far. It is up to the Courts to interpret the statutes reasonably, and as intended by the Legislature. As set forth in the accompanying motion for judicial notice, the perimeter walls enclosing an airspace unit are not the type of accessible, generally useful common area contemplated by the Legislature in drafting Civil Code section 4600.

Judicial clarification is essential here to settle the confusion over whether Section 4600 was intended to restrict -- as it was interpreted to in the underlying case -- the discretion of the governing boards of air-space condominiums to approve architectural change applications involving the perimeter walls and roofs enclosing the individual units within such buildings. CAI respectfully submits it was neither the intention of the Legislature, nor how the statute is written in the express exceptions identified in section 4600, to compel a supermajority homeowner vote as a new threshold requirement before an association may approve any and all architectural improvement applications changing in any way, the exterior of perimeter walls or roofs of an airspace condominium. To the extent the common area affected by any such architectural improvement application is the perimeter wall or roof space enclosing an individual unit, it makes the most sense and is perfectly within the four corners of Section 4600 to

conclude that such common area is not of "general use to the membership at large." As briefed infra, the governing board's decision should be reviewed under the much more deferential standard applicable to any architectural change request.

III.
THIS COURT SHOULD APPLY PRINCIPLES OF JUDICIAL DEFERENCE TO ARCHITECTURAL MODIFICATION REQUESTS IN EVALUATING WHETHER CIVIL CODE SECTION 4600 APPLIES

For good reason, California has a long-standing policy of deferring to the discretion of the governing boards and architectural committees of homeowner associations to which the power over exterior renovations has been delegated under recorded declarations. Beginning with *Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, the California Supreme Court held that a duly constituted Board of Directors for a development corporation holding the power under a building restriction to approve or disapprove building plans would be affirmed in court so long as the board was not arbitrary or capricious in exercising its power.

Applying these principles in *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, the Court of Appeal held that the internal association decision-making power of the governing board of an association regarding an exterior building architectural modification similar to the type at issue here must be upheld in court "where the record indicates the . . . Board acted within the authority granted to it by the Covenant,

pursuant to a reasonable investigation, in the best interests of the community and not in an arbitrary manner…" (Id. at 979.) In such cases, the *Dolan-King* reviewing court instructs: "we will respect and uphold their decisions." (Ibid.) Indeed, the *Dolan-King* Court expressly recognized that this judicial deference will serve the purpose of reducing litigation over a Board of Director's power to make subjective determinations concerning architectural improvement decisions.

Dolan-King relied on the California Supreme Court's decision in *Lamden v. La Jolla Shores Clubdominium Association* (1999) 21 Cal.4th 249, in which the principle of judicial deference was applied to maintenance decisions. However, the judicial deference accorded to homeowner association decisions extends not only to the internal governance decisions of the governing boards (including, as case law instructs, maintenance decisions, architectural decisions, as just two examples) but also to the enforcement of the restrictions themselves. In *Nahrstedt v. Lakeside Village Condominium Association* (1994) 8 Cal.4th 361, the Supreme Court held that the recorded restrictions in a declaration are presumed reasonable, and are to be given deference in any judicial proceeding -- a deference which serves the public policy of discouraging lawsuits over trivial matters like those at issue in the underlying lawsuit which even the trial court described as "nit picky":

> [The judicial deference standard] discourages lawsuits by owners of individual units seeking personal exemptions from the restrictions. This also promotes stability and predictability in two ways. It provides substantial assurance to prospective condominium purchasers that they may rely with confidence on the promises embodied in the project's recorded CC&R's. And it protects all owners in the planned development from unanticipated increases in association fees to fund the defense of legal challenges to recorded restrictions.

(*Nahrstedt, supra,* 8 Cal.4th 361, 383.)

This rationale extends to the architectural improvement provisions of the declaration, vesting the discretion to the Association's board and architectural committee concerning matters such as the application at issue here – whether to allow a door in place of a window at the exterior of a particular unit.

In evaluating the Association's underlying determination that the small portion of the perimeter wall enclosing the owner's individual unit was "inaccessible and not of general use to the membership at large," the Association's internal decision should be reviewed under the judicial deference standard. This is consistent with the long line of cases establishing judicial deference for the internal governance decision making of the elected boards, affording owners who wish to challenge these issues a remedy in the event they can meet the burden to establish how the architectural application deprives them of accessible and generally useful common area. (*See, e.g., Watts v. Oak Shores Community Assn.* (2015) 235 Cal.App.4th 466, 473: courts should give judicial deference to the

determination of a community association's governing board as to whether to impose rules and special fees governing short-term rentals.) More recently, in *Eith v. Ketelhut* (2018) 2018 Cal.App.LEXIS 1162, the reviewing court was careful to distinguish between a legal conclusion concerning the language of the recorded declarations (which would be a legal determination for the court) and a factual, discretionary determination by the Association's Board of Directors concerning activities within its subdivision which in *Eith* entailed whether winery activities constituted a prohibited business operation under the declaration. The latter factual evaluation was subject to judicial deference.

Following *Eith* and the many decisions discussing and applying the principles of judicial deference, it stands to reason that the Board of Director's decision here (that the small portion of wall under a window enclosing an airspace condominium unit was not common area which is accessible or of general use to the membership at large) should have been accorded judicial deference. That is not to say the Board's determination could not be challenged, but in the challenge the burden would be on the owner to show that the decision was not made in good faith, not made in a manner consistent with the governing documents, or somehow violated a public policy. Barring such a showing, the trial court should have deferred to the Board's determinations concerning the architectural improvement application.

In such a contest, applying the proper standards and burdens, it is highly unlikely that the underlying lawsuit, described by the trial court as "nit-picky," over whether the board properly exercised its discretion in approving an architectural improvement application would result in a judgment for the owner. The trial court only reached its draconian conclusion applying what it described as a hyper technical law (Section 4600). (R.T. 157:5-6.) If, on the other hand, judicial deference were properly applied, the Board's decision that the small portion of common area impacted by the window-to-door change did not involve common area which was generally accessible and useful to the membership at large, would be reviewed for whether it represents a good faith effort to further the purposes of the common interest development, are consistent with the development's governing documents, and comply with public policy [as established by statute].'" (*Lamden*, *supra,* 21 Cal.4th at 264, quoting *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 374.)

Applying those principles, the owner would bear the burden of demonstrating how, in its lawsuit described as "nitpicky" by the trial court (R.T. 104:16), the Board violated Section 4600 when it granted an owner's application to convert a window to a door (impacting only that common area enclosing the owner's unit in question) in a manner consistent with many other similar improvements made to the building throughout the

community. (See, *Watts v. Oak Shores Community Assn.* (2015) 235 Cal.App.4th 466, 473.) CAI respectfully submits that under the facts and circumstances of this case, the only reasonable conclusion would be that the Association did not violate Civil Code section 4600 when it approved the owner's architectural improvement application without putting the matter before the membership for a supermajority vote process.

Such analysis would be consistent with the well-settled principles of judicial deference which should be accorded to these kinds of internal governance decisions. Such would serve the purpose of providing stability, predictability, and reducing litigation over homeowner association renovations -- which were never intended to be the subject of the homeowner supermajority vote process under section 4600 to preclude secret "land grabs" in the first place. There is nothing in the legislative history of section 4600 suggesting the Legislature intended to disturb the principle of according judicial deference to the internal decisions of homeowner association governing boards, or subject them to a supermajority membership vote process which would unreasonably obstruct an otherwise unbroken internal governance process. In some associations, it is difficult to get homeowners to respond to annual meeting elections and meeting quorums are often not met. Injecting a supermajority homeowner vote requirement into the architectural approval process for airspace condominiums would create unreasonable impediments for such

improvements never contemplated by the Legislature in enacting section 4600 in the first place. Homeowner apathy alone would preclude renovations in many subdivisions, and then there is the added problem of homeowner conflicts. Homeowners who do not like each other could theoretically campaign to kill their neighbor's architectural improvement requests, and homeowners -- unlike directors -- do not have a fiduciary duty to review the architectural improvement requests and to act on them in the best interests of the Association as a whole. (*See, e.g., Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639, 645: "Unlike directors, the residents owed no fiduciary duties to one another....") This Court should clarify that the type of modifications to the "common area" walls enclosing an airspace condominium at issue in this case do not trigger Section 4600 at all.

However, even if there is reason to extend the membership vote determination required under Section 4600 to owner-proposed changes to the perimeter walls and roofs of air space condominiums **at all**, principles of judicial deference should have been applied in evaluating the Association's determination as to whether the small portion of wall space at issue under the pre-existing window here was "generally inaccessible and not of general use to the membership at large of the association." Either way, the result would be the same under these (and any similar) facts: a supermajority homeowner vote was not required under Section 4600 prior

to the Board's approval of the homeowner's architectural modification request. As the reviewing Court explained in *Younger v. Superior Court* (1978) 21 Cal.3d 102, 113, the "language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend."

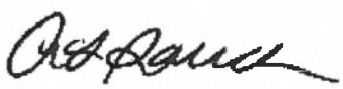
CAI respectfully submits that this case presents an opportunity for a reasonable interpretation of section 4600, clarifying for all common interest developments the contours of the supermajority membership vote requirement: when it is required, and when, as here, it was not.

IV.
CONCLUSION

CAI respectfully submits the Court should reverse the judgment, with directions to enter judgment for the Association.

Dated: January 7, 2019

EPSTEN GRINNELL & HOWELL, APC



By: _____

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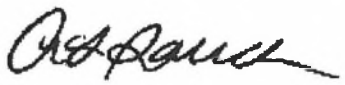
CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court, Rule 8.204(c)(1), I certify that the attached Amicus Brief filed with this Court on January 7, 2019, contains 3288 words as counted by Microsoft Word version 2010 word processing program, and does not exceed 8,400 words, including footnotes.

Respectfully submitted,

Dated: January 7, 2019

EPSTEN GRINNELL & HOWELL APC



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COMMUNITY ASSOCIATIONS INSTITUTE

Dan Richardson, et al. v. *Huntington Pacific Beach House Condominium Association*
Appellate Case No.: G055884
Superior Court Case No.:30-2014-00714844-CU-OR-CJC

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 10200 Willow Creek Road, Suite 100, San Diego, CA 92131.

I, the undersigned, hereby certify that I electronically filed the foregoing with the Clerk of the Court of Appeal – Fourth Appellate District, Division Three by using the appellate EFS system on January 7, 2019:

APPLICATION TO FILE AMICUS CURIAE APPLICATION; PROPOSED AMICUS CURIAE BRIEF

Participants in the case who are registered EFS users and will be served by the appellate EFS system.

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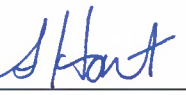
I further certify that some of the participants in the case are not registered for the Electronic Filing System (EFS) TrueFiling Portal. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-EFS participants:

NON-REGISTERED SERVICE LIST

The Honorable James L. Crandall
Orange County Superior Court
Department C33
Central Justice Center
700 Civic Center Drive
Santa Ana, CA 92701

Dated: January 7, 2019



Stephanie Hart