SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

MAX LISKIN, TRUSTEE OF THE MAX LISKIN TRUST DATED JULY 18, 2003,

Plaintiff,

vs.

HOPE RANCH PARK HOMES ASSOCIATION, a California corporation, MARCO DEL CHIARO, an individual, CRECIENTE, LLC, a California limited liability corporation, MARC A. LOWE, an individual, PAULINE LOWE, an individual, and DOES 1 through 20, inclusive,

Defendants.

CRECIENTE, LLC, a California limited liability corporation.

Cross-Complainant

vs.

MAX LISKIN, as Trustee of the Max Liskin Trust dated July 18, 2003

Cross-Defendant

Case No.: 22CV02239

STATEMENT OF DECISION

This action came on regularly for trial on October 21-24 and 28-29, 2024, in Department

4 of the above-entitled Court, the Honorable Donna D. Geck, Judge presiding, sitting without a jury, a jury having been duly waived by stipulation of the parties.

Plaintiff and Cross-Defendant Max Liskin, Trustee of the Max Liskin Trust Dated July 18, 2003 ("Liskin") was represented by Briana McCarthy, Patrick McCarthy, and Jake Stoddard of McCarthy & Kroes, LLP. Defendants Marc A. Lowe and Pauline Lowe and Defendant and Cross-Complainant Creciente, LLC (the "Lowes") were represented by David L. Cousineau and Richard Lloyd of Cappello & Noël, LLP. Defendant Hope Ranch Park Homes Association ("Hope Ranch") was represented by Jeremiah Harvey of Kaufman Dolowich, LLP.

Before trial, Marco Del Chiaro and Jill Van Zeebroeck were dismissed, and Hope Ranch was dismissed from Liskin's First, Second, Third, Sixth, Seventh, and Ninth Causes of Action. Hope Ranch remained as nominal defendant only as to Liskin's Eighth and Tenth Causes of Action.

At trial, Liskin and the Lowes introduced oral and documentary evidence. The Court also conducted a site visit of Creciente Drive and the Liskin and Lowe properties: 4125 Creciente Drive ("Liskin Property") and 4121 Creciente Drive ("Lowe Property"). At the close of the evidence, the parties presented closing arguments, and the cause was submitted for decision.

The Court issues this Statement of Decision pursuant to Code of Civil Procedure Section 632. A statement of decision explains the factual and legal basis for the Court's decision as to each of the principal controverted issues at trial. The statement focuses on the issues, with select reference to some evidence, reasonable inferences therefrom, and the law on which the Court relied.

I. Issues to be Decided.

Prior to trial, the parties stipulated that the only issue to be decided was whether a one-story restriction (the "One-Story Restriction") contained in a deed from 1940 to a prior owner of the Lowe Property (the "1940 Deed" [TEX 9]) is enforceable. (Oct. 16, 2024 Stip. at ¶ 2 ["the only issue remaining for trial is the enforceability of the One-Story Restriction, including whether injunctive or other equitable relief is appropriate, under the Eighth and Tenth Causes of Action in Liskin's First Amended Complaint and the Causes of Action in the Lowe's Cross-

Complaint."].)

Based on the parties' stipulation, resolution of each remaining cause of action depends on the answers to the following questions: (1) is the One-Story Restriction an equitable servitude, (2) if so, is it no longer enforceable due to changed circumstances, and (3) does the doctrine of unclean hands preclude the relief the Lowes seek.[1] The Court addresses each question in turn.

II. Whether the One-Story Restriction is an Equitable Servitude.

A. The evidence establishes that the original grantor and grantees did not intend for the One-Story Restriction to be a reciprocal, mutually enforceable restriction, as required to create an equitable servitude.

An equitable servitude is created when a grantor and grantee agree that the grantee is taking property subject to restrictions that are for the benefit of, and enforceable by, other parcels in the community and that such other parcels are subject to like restrictions for grantee's benefit. (E.g., *Greater Middleton Assn. v. Holmes Lumber Co.* (1990) 222 Cal.App.3d 980, 991.) Reciprocity and mutuality are indispensable to create the equity upon which such servitudes depend. (*Moe v. Gier* (1931) 116 Cal.App.403, 410 ["intent to create mutual and reciprocal rights of restrictions … is a requisite to the creation of equitable servitudes."].)

Because equitable servitudes are "at variance with the recognized right of owners … to enjoy the free and unrestricted use and control of their own land, [they] should be strictly construed." (*Grant Memorial Park v. Robla School District* (1939) 33 Cal.App.2d 528, 533; *Wing v. Forest Lawn Cemetery Ass'n* (1940) 15 Cal.2d 472, 479-480 ["provisions of an instrument … claimed to create such a servitude will be strictly construed, any doubt being resolved in favor of the free use of the land."].) The documents creating a servitude "must expressly declare [the] restrictions are for the benefit of and run with all other lots … in the area." (*Wing*, 15 Cal.2d at p. 482-483.)

The grantee's intent to accept the restriction as enforceable by the community is

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[1] Neither party asserts that the One-Story Restriction is a covenant that runs with the land. Covenants created in 1940, like the One-Story Restriction, can only run with the land if: (1) the covenantor and covenantee owned the respective lands when the covenant was made and (2) the covenant benefits the land it is being enforced against. (*Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 353.) The 1940 Deed was not between owners of property and the One-Story Restriction was a burden, so neither requirement is satisfied.

necessary and must be "definite and clear." (*Citizens*, 12 Cal.4th at p. 358 ["As a matter of policy, the understanding of the parties should be definite and clear, and should not be left to mere conjecture." (quoting *Riley v. Bear Creek Planning Committee* (1976) 17 Cal.3d 500, 510)].) Even if it may be clear that the grantor intended to create an equitable servitude, no servitude will be found unless the grantee had the same intent. (*Werner v. Graham* (1919) 181 Cal. 174, 184 ["The intent of the common grantor—the original owner—is clear enough. He had a general plan of restrictions in mind. But it is not his intent that governs. It is the joint intent of himself and his grantees…."].)

Here, the only evidence bearing on the original parties' intent is the 1940 Deed (TEX 9), a 1924 Declaration of Conditions, Covenants and Charges Affecting the Real Property Known as Hope Ranch Park ("1924 CCRs" [TEX 7]), and a 1925 Declaration by Santa Barbara Estates ("1925 Declaration" [TEX 8]). The 1940 Deed is the document by which the original grantees accepted the One-Story Restriction and is the best evidence of their intentions. The 1924 CCRs and 1925 Declaration existed in the chain of title for the Lowe Property at the time of the 1940 Deed, so could, potentially, impact the analysis. There was no testimony by the original parties to the 1940 Deed or by anyone who was involved in developing Hope Ranch. Such evidence would have been, in any event, improper extrinsic evidence. (E.g., *Riley*, 17 Cal.3d at p. 507-512 [rejecting argument that "extrinsic evidence is admissible to establish the mutual intention of the parties…."].)

1. The 1940 Deed.

The 1940 Deed does not state or indicate that the original parties intended for the One-Story Restriction to be reciprocal and mutually enforceable. The deed is between the original grantees and Santa Barbara Estates, which was a different entity than Hope Ranch. The only enforcement mechanism for the One-Story Restriction is a right of reversion in favor of Santa Barbara Estates, its successors, and assigns. (TEX 9 at p. 3-4.) This reversionary right is significant evidence that the One-Story Restriction is a personal promise, not an equitable servitude or otherwise intended to be for the benefit of, or enforceable by, the community. (See *Werner*, 181 Cal. at p. 182 ["The fact also that the only expression in the deed as to who may act

in case of a breach of the restrictions is that in such case the land shall revert to [grantor], his heirs or assigns, is strongly indicative of the fact that it was intended that [grantor], his heirs or assigns, should alone have the right to act."].)

Further, the introductory clause to the restrictions states: "This Conveyance is made and said real property is granted subject to each of the following restrictions and covenants which shall run with the land and continue in force and effect and be extended as provided under the [1924 CCRs] and any amendments, revisions or renewals thereof." (TEX 9 at p. 2.)[2] Nothing in this language indicates that the grantee agreed that the "following restrictions" were for the benefit of, or could be enforced by, neighboring parcels. Nor does it indicate that any other parcel would have similar restrictions or that the grantor was committing to impose the same or similar restrictions on other properties. These are the hallmarks that Courts required in 1940, and continue to require, for an equitable servitude to be created. (E.g., *McBride v. Freeman* (1923) 191 Cal. 152, 156 [no equitable servitude where deeds did not say restrictions were for benefit of other parcels, and distinguishing *Alderson v. Cutting* (1912) 163 Cal. 503, 504 where restrictions were stated to be "for the benefit of such other lots or their owners."]; *Wing*, 15 Cal.2d at p. 481 [no equitable servitude where grantor "in no wise bound itself to impose restrictions on any [lots] which may have been retained by it, or to convey other property which it may have held subject to the same or similar restrictions or to do anything in favor of the property of the grantee."]; *Citizens*, 12 Cal.4th at p. 356-357 [distinguishing *Werner* and *Riley* because neither had a recorded document "imposing uniform restrictions on the entire subdivision."]; *Greater Middleton*, 222 Cal.App.3d at pp. 984, 987 [equitable servitude where all deeds stated that "property herein conveyed and each and every lot in said tract shall be used for residence purposes exclusively."].)

The specific provision creating the One-Story Restriction states that the property is being

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[2] The statement that the restrictions "shall run with the land" does not create an equitable servitude. (See *Grant Memorial*, 33 Cal.App.2d at p. 534 [statement that restrictions "run with the land" "is a mere conclusion which helps in no way to determine the extent or effect of the restrictions…. The mere use of that phrase is unavailing."]; *Citizens*, 12 Cal.4th at p. 350 [restriction did not run with land even though deed stated "All these conditions and restrictions shall run with the land…."].)

conveyed subject to "the express provision that not more than one main residence as herein provided shall be erected on said real property, said residence not to exceed on story in height." (TEX 9 at p. 3.) This provision does not indicate that the parties agreed that the restriction was for the benefit of, or could be enforced by, neighboring parcels or that any other parcel would have similar restrictions, or that the grantor was committing to place similar restrictions on other parcels. No other provision of the 1940 Deed indicates that the parties agreed that the One-Story Restriction was for the benefit of, or could be enforced by, other parcels, that other parcels would have similar restrictions, or that the grantor was committing to place similar restrictions on other parcels.

The Court finds that the 1940 Deed lacks any of the language required to make the One-Story Restriction an equitable servitude. (See *Werner*, 181 Cal. at p. 183 [deed must contain "appropriate language imposing restrictions on each parcel … common to all the parcels and designed for their mutual benefit…."]; *Colyear v. Rolling Hills Community* (2024) 100 Cal.App.5th 110, 129 ["burden should be upon the developer to insert the covenant into the record in a way that it can be easily found' and '[a]ll buyers could easily know what they were purchasing.'" (quoting *Citizens*, 12 Cal.4th at p. 365)].)

2. The 1925 Declaration.

The 1925 Declaration is a one-page document that made the Lowe Property subject to the 1924 CCRs. (See TEX 8.) It does not provide any evidence that the One-Story Restriction was intended to be for the benefit of, or enforceable by, the community, that other parcels would have similar restrictions, or that the grantor was committing to place similar restrictions on other parcels. Thus, it does not provide any basis to find that the One-Story Restriction is an equitable servitude.

3. The 1924 CCRs.

The 1924 CCRs state that Santa Barbara Estates is holding the land, and will convey it, "subject to the conditions, covenants and charges set forth in the various clauses and subdivisions of this Declaration" and that the conditions, covenants and charges "shall affect all of said property [and] are made for the direct benefit thereof…." (TEX 7 at p. 1.) They further

state "The provisions, contained in this Declaration shall bind and inure to the benefit of and be enforceable by Hope Ranch Homes Association, or by the owner or owners of any property shown on said map…." (*Id.* at p. 5.) As to height restrictions, they state: "nor shall any building be erected or maintained upon any lot or parcel of said property except a private dwelling-house not more than two stories in height exclusive of finished attic, if any, and with or without basement or cellar, and outhouses hereinafter permitted…. [N]o outhouse shall be more than two stories in height." (*Id.* at p. 2.)

The 1924 CCRs are clear that the restrictions *contained therein*, including the two-story restrictions, are equitable servitudes. They do not, however, state or contain any language to indicate, or to put a purchaser on notice, that any restrictions in subsequent deeds will inure to the benefit of, or be enforceable by, other property owners. Nor do they contain any other information or language that indicates that the original parties to the 1940 Deed intended, and the original grantees accepted, the One-Story Restriction to be for the benefit of, or enforceable by, the community, that other parcels would have similar restrictions, or that the grantor would place similar restrictions on other parcels.

Thus, the Court finds that nothing in the 1924 CCRs makes the One-Story Restriction an equitable servitude.

4. Attending Circumstances.

The attending circumstances at the time of the 1940 Deed further demonstrate that the One-Story Restriction is not an equitable servitude. (*Berryman v. Hotel Savoy Co.* (1911) 160 Cal. 559, 566 ["it is better to get at the intention of the grantor from the language of the deed, interpreted in the light of the attending circumstances, than to conjecture the intent from the circumstances, and then to make the language of the deed bend to that."].)

At the time of the 1940 Deed, only three properties on Creciente Drive had been developed, two near the center of and one further to the west. (TEX 672-3 and 672-5.) Those properties, as well as all other properties on Creciente Drive, were subject only to the two-story restriction in the 1924 CCRs. (See Oct. 21, 2024 Stipulated Facts [identifying the dates properties on Creciente Drive were deeded out of Santa Barbara Estates and which properties

had a one-story restriction].) Some of those properties were still held by Santa Barbara Estates and others, including all the properties on the bluff-side of Creciente to the west of the Lowe Property had been deeded out without a more restrictive height limitation. (*Ibid.*) Santa Barbara Estates could not, even if it wanted to, place a one-story restriction on the already deeded out properties.

The two-story restriction in the 1924 CCRs provided that each property could have a two-story residence as well as multiple two-story "outhouses." (TEX 7 at p. 2.) For residences, the two-story limitation was "exclusive of finished attic, if any, and with or without basement or cellar" (*ibid*.), so the finished exterior height could exceed two-stories. Thus, every property surrounding the Lowe Property could have a residence that exceeded two stories and multiple outhouses that were two stories. If the One-Story Restriction was intended to be enforceable by the community, the original grantees alone would be subject to a community-enforceable one-story restriction, while every other property could have multiple two-story, or larger, structures. There is no evidence that the original parties intended to create, or agreed to, such a lopsided arrangement.

Our Supreme Court previously considered why grantees in this situation might agree to a personal commitment to the grantor but not to a restriction enforceable by the community:

> "[A] purchaser … might be willing to purchase subject to restrictions for the benefit of a single vendor, while he would be wholly unwilling to purchase subject to the same restrictions in favor of 50 or 500 other lot owners … He might be willing to take the chance of being able to negotiate with his vendor … but would realize that such a prospect would be hopeless if there should be a large number of separate lot owners each entitled to insist upon the maintenance of the restrictions." (*McBride*, 191 Cal. at p. 158-159.)

While the original grantees here were willing to make a personal promise to the grantor that the grantor could alter or waive on its own, there is no evidence that they agreed the restriction could be enforced by, or only altered or waived with the assent of, the community.

The fact that some, but not all, other properties on Creciente Drive were subsequently deeded out with a one-story restriction does not alter this analysis. (See *Werner*, 181 Cal. at p.

183-185 [rejecting argument that equitable servitude could be established where deeds did not say that restriction was for benefit of community but "all [grantor's] deeds exacted similar restrictions and clearly had in mind a uniform plan of restrictions…."].)

The Court finds that the attending circumstances provide further evidence that the One-Story Restriction is not an equitable servitude.

B. The One-Story Restriction is not any other kind of equitable servitude.

In rare instances, courts have found equitable servitudes where, "in the right circumstances," equity requires enforcing a burdensome covenant that is not reciprocal. (E.g., *MacDonald Properties, Inc. v. Bel-Air Country Club* (1977) 72 Cal.App.3d 693.) These types of servitudes can only be enforced by the original grantor and his assigns, they do not exist between "the balance of parcels" in the development. (*Id.* at p. 699-700.) Such servitudes can also only inure to the benefit of properties the grantor owned when the covenant was exacted. (See *Werner*, 181 Cal. at p. 180 ["it is quickly evident that as to those lots which Marshall had parted with prior to his conveyance of plaintiff's lot, there is no equitable servitude. Marshall was no longer interested in those lots and by no possibility can it be said that the covenants in the deed to the plaintiff's lot were exacted by him for the benefit of lots which he did not own."].) Here, because Santa Barbara Estates did not own the Liskin Property at the time of the 1940 Deed, Liskin cannot claim that the One-Story Restriction was exacted to benefit his property.

Additionally, as with other equitable servitudes, the grantee's intent is necessary and must be found in the deed itself. (*Werner*, 181 Cal. at p. 182 ["the grantee's intent in this respect is necessary, as well as the grantor's, and the deed, which constitutes the final and exclusive memorial of their joint intent, has not a word to that effect, nor anything whatever which can be seized upon and given construction as an expression of such intent."].) The dominant tenement must also be explicitly identified. (*Ibid.* ["It is also difficult to see how there can be any valid creation of what is practically a servitude without some designation or description of what is an essential factor, namely, the dominant tenement."].) This is because a servitude can only exist if it is appurtenant. (*Marra v. Aetna Const. Co.* (1940) 15 Cal.2d 375, 378 ["servitude cannot exist in gross, but must be appurtenant to other benefitted property." (citing *Berryman*, 160 Cal.

559)].)

The Court finds that nothing in the 1940 Deed, the 1924 CCRs, or the 1925 Declaration provides any evidence that the original parties intended for the One-Story Restriction to benefit any particular property. Thus, the One-Story Restriction is not this kind of equitable servitude. (See *Marra*, 15 Cal.2d at p. 376 [servitude found where deed "recite[d] that the covenant was made for the benefit of lot 7."]; *MacDonald*, 72 Cal.App.3d at p. 698 [servitude found where deed allowed Country Club to use "entirety of the Subject Property … as a 'rough'" for golf course, and stated that servitude was "appurtenant to that real property owned by [Country Club], adjoining the Subject Property."]; *Berryman*, 160 Cal. at p. 563-564 [no servitude where "no dominant tenement is described…." even though proposed building would "shut off light and air from" neighbor's house].)

C. Later documents, not signed by the grantee, cannot create an equitable servitude.

During trial and closing arguments, Liskin argued that certain documents that post-date the 1940 Deed show that the One-Story Restriction is an equitable servitude. Specifically, Liskin refers to (1) a 1962 Assignment Indenture between Santa Barbara Estates and Hope Ranch ("1962 Indenture" [TEX 11]), (2) the First Amended and Restated Declaration of Covenants, Conditions and Restriction of Hope Ranch Park ("1989 CCRs" [TEX 12]), (3) the Second Amended and Restated Declaration of Covenants, Conditions and Restriction of Hope Ranch ("1995 CCRs" [TEX 14]), and (4) the current Hope Ranch Building Guidelines ("Building Guidelines" [TEX 15]).

The entire agreement creating an equitable servitude must, however, be stated in the documents exchanged between the parties. (*Werner*, 181 Cal. at p. 185 ["Any understanding not incorporated … is wholly immaterial in the absence of a reformation…. [I]f the parties desire to create mutual rights in real property … they must say so, and must say it … in the written instruments exchanged between them which constitute the final expression of their understanding."]; *Riley*, 17 Cal.3d at p. 512 ["expectations … are wholly without relevance in the absence of language in the deed having the legal effect of creating such a servitude…."].)

A grantor cannot create an equitable servitude after the fact without the consent of the

grantee. (*Werner*, 181 Cal. at p. 184-185 ["[E]ach deed must be construed as of the time it is given. It cannot be construed as of a later date, and in particular, its construction and effect cannot be varied because of deeds which the grantor may subsequently give to other parties."].) Because there is no evidence that the original grantees or their successors in interest agreed that the grantor could expand the restriction documented in the 1940 Deed, neither these documents nor any others could turn the One-Story Restriction into an equitable servitude.[3]

These documents also provide no evidence of what the parties might have intended in 1940. Although extrinsic evidence may assist in determining the *meaning* of a servitude, such evidence cannot be used to determine whether a servitude was *created* in the first place. (See *Riley*, 17 Cal.3d at p. 512 n.7 (["While equitable servitudes restricting the free use of land may be created only by deed … the interpretation of the terms creating such a servitude—in the matter of scope, for instance—is governed by normal principles related to the admission of extrinsic evidence."].) The only relevant evidence is that disclosed in the documents creating the restriction. (*Citizens*, 12 Cal.4th at p. 358 ["Every material term of an agreement within the statute of frauds must be reduced to writing. No essential element of a writing so required can be supplied by parol evidence."]; *Riley*, 17 Cal.3d at p. 512 ["The trial court correctly struck extrinsic evidence of the intention of [grantees] and their grantor."].) The documents on which Liskin relies are extrinsic evidence that cannot be used to interpret the parties' intent in 1940.

The 1962 Indenture is also not identified in the Lowes' title reports. (See TEX 85 and 88.) The Lowes therefore did not have constructive notice of the 1962 Indenture, and there is no evidence they had actual notice of it. They thus took their property free of any rights that could have been created by the 1962 Indenture. (See *Zissler v. Saville* (2018) 29 Cal.App.5th 630, 642 [person who takes property without actual or constructive notice of "another's asserted rights in the property takes the property free of such unknown rights."].)

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[3] The only case that allowed a party to transfer a reversionary right to the community focused on whether such a right is transferable in general. (*Shields v. Bank of America* (1964) 225 Cal.App.2d 330.) It did not consider whether such a transfer could turn a private agreement into an equitable servitude. (*Ibid.*; see *Doe v. United Air Lines, Inc.* (2008) 160 Cal.App.4th 1500, 1514 [opinion not authority for issue not considered].) Additionally, there, unlike here, the at-issue restriction was in all the deeds. (*Id.* at 333.)

Trial exhibits 11, 12, 14, and 15 therefore do not provide any probative evidence, and do not alter the Court's conclusion above that the One-Story Restriction is not an equitable servitude.

III. Changed Circumstances.

Equitable servitudes are unenforceable when changes in the neighborhood make enforcement inequitable. (E.g., *Marra*, 15 Cal.2d at p.379 [court "warranted in concluding that conditions have undergone a sufficient change since the covenant was made to render the limitation upon the use of the respondents' land obsolete and unreasonable in its purpose."]; *Downs v. Kroeger* (1927) 200 Cal. 743, 747 ["It would be oppressive and inequitable to give effect to the restrictions; and, since the changed condition of the locality has resulted from other causes than their breach, to enforce them in this instance could have no other effect than to harass and injure the defendant, without effecting the purpose for which the restrictions were originally made." (internal citations omitted)].)

The Court finds, based on the evidence at trial and the independent evidence from the Court's site visit, that the relevant area for assessing changed circumstances is the properties surrounding Creciente Drive. The One-Story Restriction is not a general restriction applicable to Hope Ranch. Both at the time of the 1940 Deed and today, the default height restriction in the Hope Ranch CCRs was two stories. Additionally, some but not all of the other properties on Creciente Drive were deeded out with one-story restrictions, and some of those now have properties with two-story residences. Finally, Creciente Drive is set off from other areas of Hope Ranch. The relevant question is therefore whether whatever reason may have existed in 1940 to hold the Lowe Property to a different standard than other neighboring properties on Creciente Drive still exists.

At the time of the 1940 Deed, only three properties on Creciente Drive were developed. (See TEX 672-3 and 672-5.) Two of those properties were near the middle of Creciente Drive, and the third was to the west. The other properties in the surrounding area were open land or groves. The evidence, including from the Court's site visit, also established that Creciente Drive is now heavily developed with significant and expensive residential properties. (See TEX 30-

31.)

The Court's site visit confirmed that numerous properties on Creciente Drive are two-story residences or at least have what Mr. Liksin called a "second story element," meaning "relatively a small area that's a second story in comparison to the – that property." (10/22 Tr. at 122:13-14.) Many bluff-top properties have vegetation that at least partially blocks views of the ocean. Liskin witness Patricia Artigas testified that her direct view of the ocean is blocked by vegetation on the properties in front of her, including the Liskin Property. This vegetation is higher than what would have been the height of the project the Lowes originally proposed, but are no longer pursuing.[4]

Credible, uncontradicted testimony, the parties' stipulated facts, and the Court's site visit established that (1) every property on the bluff side of Creciente Drive except for the Lowe Property either has a two-story residence/element or is not restricted to a one-story residence; (2) at least 13 of the properties that border Creciente Drive have two-story residences/elements; (3) six of the ten properties that had a one-story restriction now have two-story residences/elements; and (4) most if not all of the properties on Bajada Lane, which is adjacent to Creciente Drive, have two-story residences/elements. (E.g., October 21, 2024 Stipulated Facts; TEX 30-31). Mr. Liskin further testified that he does not have a one-story restriction on his property, that he considered building a two-story residence, and he or future owners of his property could build a two-story residence. (10/22 Tr. at 111:15-112:24.)

Liskin argues that despite these changes, the One-Story Restriction is necessary to preserve views, privacy, and the "rural character" of the neighborhood. He bases his argument on testimony from Mr. Liskin, Ms. Artigas, and Adrienne Schuele. The Court did not find Ms. Schuele's testimony probative on these points. Both Mr. Liskin and Ms. Artigas testified that when they purchased their properties, they did not know about the One-Story Restriction and therefore could not have relied on it at the time of purchase to provide these protections. (*Id.* at

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4 The Court found credible Dr. Lowe's testimony that the Lowes are no longer pursuing that design because of how far back the residence would have to be pushed from the bluff.

109:12-14, 10/24 Tr. at 84:21-85:6.) They further testified that when they purchased their properties, they knew multiple properties on Creciente Drive had two-story residences and that those residences did not destroy the area's rural character. (10/22 Tr. at 127:26-129:13, 10/24 Tr. at 85:10-85:20.) Finally, Mr. Liskin testified that it would be possible to build a two-story residence on the Lowe Property that would be acceptable to him. (10/22 Tr. at 117:3-117:10.) Mr. Liskin also testified that when he purchased his property, he believed that part of the uniqueness of Hope Ranch came from its governing documents, by which he meant the 1995 CCRs and the Building Guidelines. (*Id.* at 39:4-11, 110:8-111:14.) These were the documents that he considered important for protecting his privacy, views, and the rural character of Hope Ranch. (10/22 Tr. at 42:5-44:24, 110:8-111:14.)

The 1995 CCRs—which are the operative CCRs—and the Building Guidelines set out Hope Ranch's current community-wide expectations of acceptable development, and provide a process by which neighbor concerns about views, privacy and rural character may be considered and balanced against a property owner's interests and rights to develop their property. (See TEX 14-15.) They also already provide the protections that Liskin asserts the One-Story Restriction is necessary to provide, and they do so in a way that balances the rights, and competing interests, of Hope Ranch homeowners and their neighbors. Section 1.03 of the Building Guidelines states that the architectural review and approval process is intended to "maintain and enhance the rural character of Hope Ranch," "to minimize incompatibility with surrounding properties," "to minimize the obstruction of views…," and "to respect the privacy and quiet enjoyment of residents." (TEX 15 at p. 4-5.) The Guidelines also require the Architectural Board of Review to find, before approving a project, that "appropriate consideration has been given to … the impacts on views, noise, traffic and intensity of use or any potentially damaging influence to adjacent properties…." (*Id.* at p. 5.)

Section 9.08 of the 1995 CCRs states that any development of properties in Hope Ranch shall seek "wherever practicable to preserve views from Lots in Hope Ranch and to protect privacy. The location, height and design of structures and plantings shall not unreasonably impair views from other Lots or intrude on the privacy of residents of other Lots." (TEX 14 at p.

33.) The Hope Ranch Board is authorized to "require modifications be made, wherever practicable, to minimize impacts on views from other Lots and to protect the privacy of other residents." (*Ibid.*) If any homeowner believes that these requirements are not being enforced, they have the right to seek enforcement, including by filing a lawsuit. (*Id.* at p. 35, § 11.03.) Mr. Liskin testified that these rules apply even if the One-Story Restriction is not enforceable, and the Court agrees. (10/22 Tr. at 114:23-115:2.)

Therefore, the One-Story Restriction is not necessary to protect views, privacy, and rural character. All the One-Story Restriction does at this point is treat the Lowes differently than their neighbors, including all their neighbors on the bluff-side of Creciente Drive. There is no evidence that there is any basis or need to treat the Lowe Property differently than these other properties.

The Court finds, as an alternative holding, that if the One-Story Restriction was ever an equitable servitude, changed conditions render it obsolete and unreasonable. Based on current conditions—as demonstrated through evidence at trial and the Court's site visit—it would be injurious and inequitable to enforce the One-Story Restriction because, inter alia, (1) so many other properties on Creciente Drive have two-story residences/elements, (2) numerous properties that have a one-story restriction already have two-story residences, (3) all other properties on the blufftop side of Creciente Drive already have, or can have, two-story residence, (4) enforcing the One-Story Restriction would preclude the Lowes, and any subsequent owner of the property, from building a two-story residence no matter how minimal the second-story element was or how limited an impact it had on neighboring properties, and (5) the 1995 CCRs and Building Guidelines already have procedures to protect the issues Liskin asserts the One-Story Restriction is necessary to protect.

IV. Unclean Hands.

Liskin also contends that the defense of unclean hands precludes the Lowes from obtaining any relief. The defense demands that a plaintiff act fairly in a matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or be denied relief. (*Kendall-Jackson Winery, Ltd. v. Superior Ct.* (1999) 76 Cal.App.4th 970, 978.) Whether

the defense applies is a question of fact. (*Ibid*.) The defense protects judicial integrity because allowing a plaintiff with unclean hands to recover creates doubts as to the justice provided. Therefore, precluding recovery protects the court's rather than the opposing party's interests. (*Ibid*.).

The misconduct must relate directly to the transaction concerning which the complaint is made, i.e. it must pertain to the very subject matter involved and affect the equitable relations between the parties. (*Id.* at p. 979.) There must be a direct relationship between the misconduct and the claimed injuries, so that it would be inequitable to grant the requested relief. (*Ibid*.) The issue is not that the plaintiff's hands are dirty, but rather that the manner of dirtying renders inequitable the assertion of such rights. The misconduct must prejudicially affect the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief. (*Ibid.*)

The Court finds there is no evidence that indicates that the Lowes acted improperly, much less that rises to the level required for unclean hands. This conclusion is based on the Court's assessment of the evidence at trial and the credibility and demeanor of all witnesses at trial, including Dr. Lowe. The doctrine of unclean hands therefore does not prohibit the Lowes from obtaining the relief they seek.

V. Judgment to be Entered.

Judgment is to be entered as set forth below:

1. On Liskin's Eighth Cause of Action for Enforcement of the 1940 Deed and Governing Documents, the Lowes shall take judgment against Liskin. The Court finds that the One-Story Restriction is not enforceable.

2. On Liskin's Tenth Cause of Action for Injunctive Relief, the Lowes shall take judgment against Liskin. The Court finds that the One-Story Restriction is not enforceable.

3. On Creciente LLC's First Cause of Action for Quiet Title, Creciente LLC shall take judgment against Liskin. The Court finds that the One-Story Restriction is not enforceable.

4. On Creciente LLC's Second Cause of Action for Declaratory Relief, Creciente LLC shall take judgment against Liskin. The Court finds that the One-Story Restriction is not

enforceable. The Court further finds that there are adequate safeguards in place to protect the interests of Liskin and others. In order to be permitted to build a second story or "second story feature" Lowe would have to secure the approval from five separate reviewing entities, the Hope Ranch ABR, the Hope Ranch Board of Directors, the Zoning Commission, the County of Santa Barbara and the Coastal Commission.

5. The June 29, 2022 Preliminary Injunction is vacated.

6. The Lowes are awarded costs of suit.

Statement of Decision

This Tentative Decision shall constitute the Court's Statement of Decision as described in California Rules of Court Rule 3.1590 unless within 10 days either party specifies any "other" controverted issues or makes any "other" proposals not covered in the Tentative Decision. If there are other controverted issues or proposals not covered in the Tentative Decision, the Court will prepare the Statement of Decision after the parties have submitted their positions on the issues pursuant to the time lines in California Rules of Court Rule 3.1590.

Judgment

Counsel for Defendant Marc and Pauline Lowe, shall, within five (5) days hereof, prepare, serve and file a Proposed Judgment, consistent with this Statement of Decision, and the Proposed Judgment shall be submitted to counsel for Plaintiff Max Liskin, for signature in accordance with California Rules of Court Rule 3.1590. Counsel shall follow the protocol set out in California Rules of Court Rule 3.1590.

Dated: **12/16/2024**

Donna D. Geck

DONNA D. GECK
Judge of the Superior Court