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6 Attorneys for Defendants
Brittan Heights Condominium Association,
7 American Management Services, Inc.;
Sherry Selwood, Cece Cleary; Vanessa Lea,
8 Ed Pozzi, and Scott Bentson

FILED
SAN MATEO COUNTY

JUN 24 2015

Clerk of the Superior Court

By

DEPUTY CLERK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN MATEO

13 CHARLES OGREN, SUSAN OGREN,

No CIV527270

14 Plaintiffs,

15 vs

16 BRITTAN HEIGHTS CONDOMINIUM
ASSOCIATION, AMERICAN
17 MANAGEMENT SERVICES, INC ; AC
ENTERPRISES; ENGINEERED SOIL
18 REPAIRS, INC , SHERRY SELWOOD;
CECE CLEARY; VANESSA LEA; ED
19 POZZI, SCOTT BENTSON, and DOES 1-50,
20 Inclusive,

21 Defendants

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS BRITTAN
HEIGHTS CONDOMINIUM
ASSOCIATION; AMERICAN
MANAGEMENT SERVICES, INC.;
SHERRY SELWOOD; CECE CLEARY;
VANESSA LEA; ED POZZI; AND SCOTT
BENTSON'S MOTION FOR SUMMARY
JUDGMENT**

Date: June 18, 2015

Time: 9:00 a.m.

Dept.: Law & Motion

Complaint Filed: March 12, 2014

Trial Date: December 14, 2015

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 PLEASE TAKE NOTICE that the Order Granting Defendants Brittan Heights
26 Condominium Association, American Management Services, Inc.; Sherry Selwood; Cece Cleary,
27 Vanessa Lea; Ed Pozzi; and Scott Bentson's Motion for Summary Judgment ("Order) in the
28 above-captioned matter was filed with the Court on June 23, 2015. A true and correct copy of

-1-

MSC
12/63/15

By
Fax

1 the Order is attached hereto as **Exhibit A**.

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3 Dated. June 24, 2015

BERDING & WEIL LLP

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By 

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Paul W. Windust
Daniel S. LaCount
Attorneys for Defendants
Brittan Heights Condominium Association;
American Management Services, Inc, Sherry
Selwood, Cece Cleary, Vanessa Lea, Ed Pozzi,
and Scott Bentson

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EXHIBIT A

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6 Attorneys for Defendants
7 Brittan Heights Condominium Association,
8 American Management Services, Inc.,
9 Sherry Selwood, Cece Cleary, Vanessa Lea,
10 Ed Pozzi; and Scott Bentson


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FILED
SAN MATEO COUNTY

JUN 23 2015
Clerk of the Superior Court
By _____
DEPUTY CLERK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN MATEO

13 CHARLES OGREN; SUSAN OGREN,
14
15 Plaintiff,
16
17 vs
18 BRITTAN HEIGHTS CONDOMINIUM
19 ASSOCIATION; AMERICAN
20 MANAGEMENT SERVICES, INC., AC
21 ENTERPRISES, ENGINEERED SOIL
22 REPAIRS, INC., SHERRY SELWOOD;
23 CECE CLEARY, VANESSA LEA; ED
24 POZZI; SCOTT BENTSON, and DOES 1-50,
25 Inclusive,
26
27 Defendants

No. CIV527270 
**[PROPOSED] ORDER GRANTING
DEFENDANTS BRITTAN HEIGHTS
CONDOMINIUM ASSOCIATION;
AMERICAN MANAGEMENT
SERVICES, INC.; SHERRY SELWOOD,
CECE CLEARY, VANESSA LEA, ED
POZZI, AND SCOTT BENTSON'S
MOTION FOR SUMMARY JUDGMENT**
Date: June 18, 2015
Time: 9:00 a.m.
Dept.: Law & Motion
Complaint Filed. March 12, 2014
Trial Date. July 20, 2015

23 The Motion for Summary Judgment filed by Defendants Brittan Heights Condominium
24 Association ("Association"), American Management Services, Inc. ("AMS") and Association
25 board member defendants Sherry Selwood, Cece Cleary, Vanessa Lea, Ed Pozzi and Scott
26 Bentson (collectively referred to herein as "Board Members") came on regularly for hearing
27 before this Court on June 18, 2015.

28 After full consideration of the evidence, and the written submissions by the parties, and

1 good cause appearing, the Court issued the following tentative ruling

2 The Court admonishes Plaintiffs' counsel Marc Bender, David Finkelstein, and the law
3 firm of Finkelstein, Bender & Fujii counsel for violating CRC Rule 3.1113(f) (table of contents
4 required for memoranda exceeding 10 pages) and 3.1110(f) (requiring hard tabs between
5 exhibits). The Court directs Counsel to comply with all Rules of Court in all motions in all
6 matters before the court. MB

7 Defendants' objections 1 – 3 are OVERRULED, as they are objections to Plaintiffs'
8 Opposing Separate Statement of Undisputed Facts.

9 Defendants' objections 4-9, and 13 are SUSTAINED

10 Defendants' objections 10 and 11 are OVERRULED as nonspecific (objection not
11 applicable to all statements).

12 Defendants' objection 12 is OVERRULED.

13 The motion for summary judgment is GRANTED. Under the undisputed facts, the
14 Complaint and all causes of action lack merit.

15 A) The First Cause of Action (Negligence) lacks merit because Plaintiffs cannot
16 establish any duty of care owed by Defendants to Plaintiffs. As a matter of law, a landowner has
17 no natural right to an unobstructed view. (*Pacifica Homeowners' Assn. v Wesley Palms*
18 *Retirement Community* (1986) 178 Cal.App 3d 1147, 1152) Therefore, the allegation that
19 Defendants installed retaining walls that obstructed Plaintiffs' view (Complaint ¶ 25) fails to
20 allege a breach of duty (See also *id.* ¶ 24 [alleging failure to place walls "in suitable
21 locations"])

22 In addition, the allegation that Defendants failed to remove tree stumps and failed to
23 replace trees (Complaint ¶ 24) is barred by judicial deference. A homeowners' association
24 board has complete discretion in determining the manner in which it will maintain and repair
25 common areas. When the board "exercises discretion to select among means for discharging
26 an obligation to maintain and repair a development's common areas, courts should defer to the
27 board's authority and presumed expertise" (*Lamden v La Jolla Shores Condominium*
28 *Homeowners Ass'n* (1999) 21 Cal 4th 249, 265.) The board must exercise such discretion "upon

1 reasonable investigation, in good faith and with regard for the best interests of the community
2 association and its members ” (Id) Plaintiffs offer no evidence about whether Defendants failed
3 to act within this limitation during the process of selecting the means of addressing soil erosion.
4 Plaintiffs offer evidence that the tree removal was conducted in an unreasonable manner (PUMF
5 49-51, 55 & 56) The proper inquiry of “reasonableness” and good faith pertains to how the
6 Board “selects among means” of conducting maintenance, not the manner in which it is
7 conducting (*Lamden, supra*, at 265) Plaintiffs’ evidence of allegedly false statements (PUMF 46
8 & 56) reflect only that statements were made, but not that any fraud occurred Plaintiffs’
9 evidence of other walls lower down the hill (PUMF 52-54) shows only that alternatives exist, but
10 not that Defendants’ choice was unreasonable or not in good faith.

11 B) The Second Cause of Action (breach of governing documents) also lacks merit
12 The claim is based on “failing to install retaining walls in suitable locations adjacent to Plaintiffs’
13 property, damaging trees and landscaping next to Plaintiffs’ property, and failing to remove tree
14 stumps and replant trees and associated landscaping” (Complaint ¶ 31) and “installing retaining
15 walls in locations that block views and greatly devalue Plaintiffs’ property whereas they could
16 have been placed in other locations that would have a much lesser impact on Plaintiffs’ value and
17 desirability ” (Id ¶ 32.) It is undisputed that the CC&Rs do not impose a duty on Defendants to
18 not remove trees or to not obstruct Plaintiffs’ views ” (UMF 23) Therefore, the acts described in
19 paragraphs 31 and 32 do not constitute a breach. Plaintiffs attempt to dispute Fact 23 by citing to
20 section 7 9 of the CC&Rs That provision, however, contains restrictions against “owners,” not
21 against the governing board. Plaintiffs’ contention that “Brittan Heights Association should be
22 subject to these same requirements” (Oppos. P&A at 8 21) is unsupported by any authority

23 C) The third cause of action (declaratory relief) alleges that the dispute between the
24 parties concerns their “respective obligations under the governing documents of BRITTAN
25 HEIGHTS HOA with respect to appropriate maintenance of common areas adjacent to Plaintiffs’
26 property as more fully referenced herein ” (Complaint ¶ 40) As set forth above, the undisputed
27 material facts demonstrate that Defendants have no duty to provide Plaintiffs with an
28 unobstructed view, and defendants have full discretion, free of judicial intervention, to determine


1 the means of maintaining and repairing the common areas. Under the undisputed facts, therefore,
2 no controversy exists between the parties regarding Plaintiffs' right to a view or Defendants
3 removal and replacement of trees or installing a retaining wall. The third cause of action has no
4 merit. (Code of Civ. Proc. § 1060).

5
6 IT IS SO ORDERED

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8 Dated: June 18, 2015 
9 JUDGE OF THE SUPERIOR COURT

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16 Approved as to Form and Content, (as noted).

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19 Marc D. Bender
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PROOF OF SERVICE

Case Name: Charles and Susan Ogren v Brittan Heights Condominium Association, et al
Case No: San Mateo County Superior Court Case No CIV527270

I am employed in the County of Contra Costa, State of California. My business address is 2175 N. California Blvd., Suite 500, Walnut Creek, California 94596. I am over the age of eighteen years, and not a party to the within action.

On June 24, 2015, I served the within:

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS BRITTAN HEIGHTS CONDOMINIUM ASSOCIATION; AMERICAN MANAGEMENT SERVICES, INC.; SHERRY SELWOOD; CECE CLEARY; VANESSA LEA; ED POZZI; AND SCOTT BENTSON'S MOTION FOR SUMMARY JUDGMENT

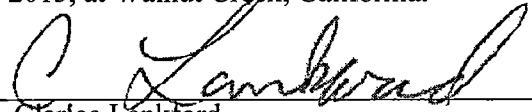
on the party[ies] listed below, addressed as follows

(SEE ATTACHED SERVICE LIST)

By First Class Mail/Ordinary Business Practices [C.C.P. §§ 1013, 1013a]. By causing a true copy thereof to be enclosed in a sealed envelope or package, addressed to the party[ies] as stated on the attached service list. I am readily familiar with the firm's business practice for collection and processing of envelopes and packages for mailing with the United States Postal Service. Under the firm's practice, mail is deposited in the ordinary course of business with the United States Postal Service at Walnut Creek, California, that same day, with postage thereon fully prepaid. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after the date of deposit for mailing

By Overnight Delivery [C.C.P. § 1013, 1013a]. By causing a true copy thereof to be enclosed in a sealed envelope or package designated by the express service carrier, with all delivery fees paid or provided for, addressed to the party[ies] as stated on the attached service list. I am readily familiar with the firm's business practice for collection and processing of overnight deliveries for deposit in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents. Under the firm's practice, overnight deliveries are deposited in the ordinary course of business with the express service carrier at Walnut Creek, California, that same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 24, 2015, at Walnut Creek, California.

By: 
Clarice Lankford

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SERVICE LIST

Case Name: *Charles and Susan Ogren v Brittan Heights Condominium Association, et al*
Case No: San Mateo County Superior Court Case No CIV527270

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