



SOUTHWYCK v. SOUTHWYCK, SECTION IV LAWSUIT UPDATE (01/17/2018)

Background: Beginning in 2014, Southwyck, Section IV Homeowners' Association, Inc. (the "Village Association" or "Section IV") attempted to unilaterally amend and restate its Declarations of Covenants, Conditions and Restrictions ("Declaration") so that it could withdraw itself from the existing property owner association structure associated with Southwyck Community Association, Inc. ("Master Association"), despite the fact that the Declaration states that any amendment must be approved by a majority of both the Master Association and the Village Association. The trial court rendered summary judgment in favor of the Master Association, holding that no genuine issue of material fact existed and that the Master Association is entitled to judgment as a matter of law. Section IV appealed the trial court's judgment. In October, 2017, the 14th Court of Appeals affirmed the trial court's judgment in favor of the Master Association, and Section IV filed a motion for rehearing, which was denied. No petition for review was filed with the Texas Supreme Court. Accordingly, the Court of Appeals' opinion is final.

Below are excerpts taken directly from the Court of Appeals' opinion, which can be found in its entirety online at <https://law.justia.com/cases/texas/fourteenth-court-of-appeals/2017/14-16-00139-cv.html>

- *...an amendment to the associations' governing instrument requires a majority vote from both associations.*
- *The Declaration has governed the associations' relationship since 1984.*
- *[The Village Association, et al.] ...are permanently enjoined from recording or attempting to record any document that amends or purports to amend or restate (or both amend and restate) the Declaration... unless that document is signed by those persons holding a majority of votes in the Southwyck Community Association, Inc. ("Master Association") and signed by those persons holding a majority of votes in the Southwyck, Section IV Homeowners' Association, Inc. ("Village Association").*
- *...the Declaration vests the master association with greater authority to resolve conflicts between the associations in the areas of covenant enforcement, architectural control, and amenity designation. The Declaration also provides that the master association alone can collect maintenance fees from Southwyck residents; these fees are disbursed to the village association only after the master association receives its allotted portion.*
- *Had the drafters of the Declaration intended amendments to be solely within the province of Section IV residents, they could have omitted altogether any mention of the "Master Association" in the amendment provision.*
- *In short, the village association's interpretation of the amendment provision and its related sections ignores the structure created by the Declaration to govern the associations' integrated operations and the master association's dominant role in the arrangement. In stark contrast to this scheme, the village association's interpretation would permit the village association to withdraw from the master association-village association paradigm without any input or consent from the master association. The Declaration, considered as a whole, does not support that forced construction.*