



## Court's Waiver Order Does Not Bar Association from Collecting Judgments

*Whispering Ridge Homeowners Association v. Chaudry*, Nos. D050631, D052506, Cal. App. Ct., April 20, 2009

**Association Operations/Miscellaneous:** In an unpublished opinion, a California appeals court affirmed a trial court's refusal to apply a *res judicata* bar to interest declarations granted to a homeowners association for attorneys' fees and costs incurred in enforcing restrictive covenants.

Whispering Ridge Homeowners Association in San Diego County, Calif., sued Waheed Chaudry to enforce landscaping requirements contained in covenants governing the residential development where Chaudry owned property. Over the course of protracted litigation, four separate awards for attorneys' fees and costs were issued in favor of the association. The amounts for the first and second awards were determined by the trial court in 2002, and the amounts for the third and fourth awards were determined by the appeals court in 2003 and 2004. In August 2004, the association filed a memorandum of costs on the fourth award. The memorandum of costs specified a greater amount than the amount set forth in the court's remittitur (a ruling by a judge lowering the amount of damages granted by a jury in a civil case), and the association stated that it was not seeking any amount greater than that set by the court. In November 2004, the association filed four declarations of accrued interest and obtained four writs of execution to collect each of the four awards.

Chaudry moved to recall the writs of execution, arguing that the association had waived its right to collect the first three awards because it had stated it was only seeking to recover the amount in the fourth award. In 2005, the trial court recalled the writs of execution obtained by the association for the first three awards based on its factual finding that the association had earlier stated its intent to waive its rights to obtain recovery in those writs, and the association did not appeal this waiver order. However, after the time to appeal the order had expired, in October 2006, the association obtained a second set of writs of execution and filed interest declarations for the four awards. Chaudry moved to strike the interest declarations and recall the writs, arguing that enforcing the first three awards was barred by *res judicata* based on the trial court's waiver order recalling the first set of writs. *Res judicata* bars relitigation of the same claim and relitigation of the same issue raised in a different cause of action. The trial court denied Chaudry's motions and changed its 2005 waiver order, concluding that the association had not waived its rights to collect the amounts in the first three awards. The trial court explained that it now recognized that the association had only waived any fees or costs exceeding the amount set forth in the court's remittitur for the fourth award, not the preceding three awards.

The court agreed with Chaudry that the trial court had no authority to correct its 2005 waiver order because the order was an appealable order, and the time to appeal had already passed. However, although the court noted that a trial court generally is barred from correcting judicial error in an appealable order after the time to appeal has passed, and this principle is consistent with the manner in which finality is defined for purposes of *res judicata*, there are other requirements for invoking *res judicata* that were not met. Four elements are required to invoke the doctrine of *res judicata*: (1) the claim or issue in the present action must be identical to the one litigated in a prior proceeding; (2) the prior proceeding must have resulted in a final judgment or order; (3) the judgment or order must be on the merits; and (4) the party against whom the doctrine is being asserted must have been a party or in privity with a party to the prior proceeding.

In this case, the third element, a judgment or order on the merits, was missing. The court refused to construe the waiver order, which was made to support the recall of the first set of writs without extinguishing the judgment, as a determination on the merits for purposes of *res judicata*. Although the waiver order adjudicated the association's right to recover under the money judgments, the waiver finding did not impact the existence or the validity of the money judgments themselves, and, therefore, there was no judgment on the merits. The court held that the trial court properly declined to apply the waiver order as a bar to the second set of writs of execution and the interest declarations obtained by the association.

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