



June 2018

Case Law Update: Golf Course Restrictive Covenant Upheld

Owners of unprofitable golf courses are increasingly wanting to redevelop their golf courses as residential property, especially in areas where land for residential development is at a premium. Some golf courses are subject to recorded covenants that require the property to be used for recreational purposes and therefore prohibit such redevelopment.

In *Victorville West Limited Partnership vs. The Inverrary Association*, a golf course owner unsuccessfully filed a suit against the homeowners association seeking to cancel this type of restrictive covenant on the grounds that the golf course was unprofitable. The trial court ruled in favor of the homeowners association. The golf course owner appealed, arguing that the trial court should have cancelled the restrictive covenant because a substantial change in circumstances prevented the covenant's original purpose from being carried out and the covenant was an unlawful restraint on alienation. The appellate court affirmed the trial court decision. The court stated the test for determining the validity of a restrictive covenant is whether "the original intention of the parties can be carried out despite alleged materially changed conditions or, on the other hand, whether the covenant is invalid because changed conditions have frustrated the object of the covenant without fault or neglect on the part of the party who seeks to be relieved from the restrictions." The court determined that the *Inverrary* restrictive covenant was still valid because it continued to benefit the surrounding residential properties by preserving the character of the community and providing residents with a pleasant view.

If other courts follow the reasoning of the *Inverrary* court, it will be difficult for an owner of a golf course that is subject to a restrictive covenant to succeed in invalidating the covenant, because neighboring property owners can almost always claim the golf course continues to benefit their properties by preserving the character of the community and providing them with a pleasant view.

Author

This GT Alert was prepared by:

- [Glenn A. Gerena](#) | +1 954.768.8223 | gerenag@gtlaw.com

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