

Pete Dauster

From: Pete Dauster
Sent: Wednesday, October 31, 2018 7:59 AM
To: 'Buck Hammond'
Subject: RE: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

A well-reasoned letter by Kevin, he is a good attorney. However, I would definitely argue that the colors of the other roofs in the community should provide the guidance needed. And regardless, it still requires approval which, as I recall, they did not seek. Had they done that it would not have become an issue.

Keep me posted and let me know if I need to get involved. Pete.

Peter J. Dauster
Gast Johnson & Muffly PC
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From: Buck Hammond <buck.hammond@gmail.com>
Sent: Wednesday, October 31, 2018 6:36 AM
To: Pete Dauster <pdauster@gjmlawfirm.com>
Subject: Re: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

Here you go Peter.

On Tue, Oct 30, 2018 at 4:55 PM Pete Dauster <pdauster@gjmlawfirm.com> wrote:

Buck: Can you send me a copy of the letter attached to Kevin Ward's email? Thanks, Pete.

Peter J. Dauster

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From: Buck Hammond <buck.hammond@gmail.com>

Sent: Tuesday, October 30, 2018 2:56 PM

To: Pete Dauster <pdauster@gjmlawfirm.com>

Subject: Fwd: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

Dear Peter:

I hope you are doing well. I was disappointed that I was traveling and unable to meet with you, Walker and Irve. Attached is the email from the Brucker's lawyer and unfortunately an email that Andy accidentally sent to the board and cc'd the Brucker's inadvertently. I am also drafting a letter to the Brucker's (based on your discussion with Walker and Irve) outlining the remedy and will send that as soon as Walker goes over it.

Buck Hammond

President Poudre Overlook HOA

----- Forwarded message -----

From: Andrew Mowery <andrew.p.mowery@gmail.com>

Date: Thu, Oct 25, 2018 at 11:49 AM

Subject: Re: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

To: Buck Hammond <buck.hammond@gmail.com>

Cc: Keith Knight <send.keith@gmail.com>, walker flanary <wgflanary@gmail.com>, Maryann Goyn <goynm@outlook.com>, Paul Janov <pauljanov1@gmail.com>, Irve Denenberg <ibdpo4hoa@gmail.com>, Clay & Gloria Jones <joneswv@gmail.com>

I apologize, I didn't see the Bruckers on the CC list. I only removed the attorney in my reply. I sincerely apologize for this error.

On Thu, Oct 25, 2018 at 11:48 AM Andrew Mowery <andrew.p.mowery@gmail.com> wrote:

Good morning everyone!

I've read and reviewed the letter from the Brucker's attorney.

I think the first question is whether anyone has contacted our HOA attorney yet. If yes, I would think this letter needs to be reviewed (promptly) for any additional or follow-up comments.

Unfortunately, I would tend to agree that the rules, as written, do not create an exclusive restriction to two colors/manufacturers as we are attempting to enforce. My opinion on that has not changed by this letter. I agree with Mr. Ward that the vague language gives an open-ended interpretation of what "similar" is.

However, the reason I've supported our decision made at the last meeting is because there is certainty in a requirement of the process of getting ACC approval on any architectural changes. We emphasized that they didn't come to us with their variance, and had they done so (like other homeowners had), we would have denied their request. The logic is sound.

So, the contention here is that the ACC and/or the Board waived their rights to approve roof changes by sending out an email that included the vague "similar" language, essentially giving pre-approval if you simply follow the language of the rule. That, in turn, causes us to revisit the issue of whether the Brucker's were required to get ACC approval before they chose, on their own, to interpret the "similar" language in the rule. Unfortunately, there's a reasonable argument from Mr. Ward here regarding waiver that we didn't consider or discuss at our last Board meeting. I think this is the issue that needs review from the HOA attorney, as waiver is actually a complex topic that sometimes defies layman's logic.

While our intentions may have been clear to ourselves in limiting roofs to two color names from two manufacturers, and the word "similar" may have meant, to us, that only brown-tones qualify as "similar", it certainly isn't that unreasonable for another interpretation to result in a gray-tone as "similar". I had brought up with Irve, early on in

this discussion, that I honestly didn't feel like this was actually that much of a variation in appearance when I drove down Headwater. I personally feel it is similar in terms of overall appearance. It doesn't stand out to me any stronger than any of the new paint colors that have been applied across the neighborhood. As one of the people who worked with the original builder, there were "tone" restrictions on the paint colors that we are no longer following with our approvals of various darker tones and stronger contrasts. If I were these homeowners and we got deep into the topic of "tones", I'd bring up the changes in paint color tones that have been approved as an example of how a change from brown to gray tones in roofing materials would be judged within the boundaries of interpretations of "similar".

It is my opinion, then, that we need to refocus on the notice that we sent out that gave blanket approval on the condition that the rules were followed. I tend to agree with Mr. Ward that we may have waived our right to hold the lack of running the gray-colored shingles by the ACC against them. We essentially said, "follow the rules, and you don't need to ask for approval". If the rules are vague, and they are, and we were concerned with anyone using anything other than a brown town, unfortunately, we would necessarily have to require that every homeowner go through the formal process of submitting their intended materials. We chose to avoid that workload under the presumption that everyone would interpret the two colors as an exclusive requirement, and that "similar" would be exclusively limited to interpretations of brown-tones.

I think they are also raising a legitimate point regarding a hearing with the board. At the time when I was in contention with a prior Board, I too demanded a hearing but was denied that meeting for 3 months. When it finally occurred, the primary board member causing the issue failed to show up, and one of the others wasn't notified of the meeting - and it was held at the attorney's office with the intention by that board to saddle me with the bill for such a meeting. I understand the emotions of interpreting the rules of the association to read that if a hearing is requested, it should be granted. I interpret the rules the same way, and if we are going to be strict or rigid about enforcement, that would also require us to do the same in rules that affect our responsibilities to provide a hearing.

Therefore, I think, in order to handle this properly from this point forward we need to:

1. Get our attorney to weigh in on the vague language of "similar"
2. Get our attorney to weigh in on whether we waived a right to review their interpretation of "similar" through the ACC Committee by sending out a blanket conditional pre-approval email.
3. Get our attorney to review whether we are obligated to have an in-person hearing, as the rules appear to suggest.
4. Schedule a hearing to resolve the matter, if our attorney does not have objections.

I understand we've had vacations that have affected this matter, but I believe that at this time, we are all here and available. Keith has recused himself on this matter, so his absence should not be a factor in any delays regarding an in-person hearing. Although, I'd personally rather have his wisdom in the room, for the record.

Sincerely,

Andy

On Wed, Oct 24, 2018 at 11:16 PM Kevin Ward <kward@wicklaw.com> wrote:

Dear Members of the Board:

Please find the attached communication and documentation on behalf of our clients, Linda and Kevin Brucker. A copy of the same has been placed in the U.S. Mail to the attention of the Association.

Respectfully submitted,

Kevin William Ward

Associate Attorney

323 South College Avenue, No. 3

Fort Collins, Colorado 80524

www.wicklawn.com

Phone: 970.482.4011

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Ciao,
Buck

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Ciao,
Buck



WICK & TRAUTWEIN, LLC

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*ALSO ADMITTED IN WYOMING
**ALSO ADMITTED IN IL, MO, TX.

Wednesday, October 24, 2018

Via Email & U.S. Mail:

Poudre Overlook
Homeowners Association
P.O. Box 885
Laporte, Colorado 80535

Re: Linda & Kevin Brucker, 1386 Tributary Court, Fort Collins, Colorado 80521

Dear Members of the Board:

Our firm has been retained by Linda and Kevin Brucker to address matters relating to their home within Poudre Overlook Homeowners Association ("Association"). It has come to our attention that the Architectural Control Committee ("ACC") has taken some issue with the color or manufacturer or our clients' shingles. As you are aware, their roof—along with numerous other roofs within the Association—was replaced following the hail event earlier this year.

Recent communications between our clients, the ACC, and members of the Board indicate that some review by the Board is currently underway. After a review of the Declaration of Covenants and applicable rules and guidelines from the ACC, it is not at all clear to our office what issues are properly before the Board or what action the Board may be contemplating. This is addressed further below.

Following the hail event, on June 30, 2018, Mr. Dennenberg, as ACC Chairman, issued a bulletin to all members of the Association. He stated that "this letter serves a written approval for roof replacements" if members follow the rules and regulations, specifically, the Architectural Control Guidelines effective February 1, 2006. As you are aware, under the guidelines, "[s]hingles are to be Tamko Weathered Wood or similar manufacturer and color."

Most notably, neither the Declaration nor the guidelines provide any additional information regarding what constitutes a "similar manufacturer" or a "similar color." In contract matters, where language of a document is reasonably susceptible to different meanings, that language

must be construed against the drafter. See for instance, *Swentkowski By & Through Reed v. Dawson*, 881 P.2d 437, 438 (Colo. App. 1994) (regarding the interpretation of contracts with well-settled principles of contractual interpretation). In short, our clients are not responsible for lack of clarity or failures in the language of the guidelines.

As the ACC is aware, our clients had Malarkey Roofing Products' Vista Shingle Line installed and the color is Storm Gray. This was previously provided to the ACC by our clients. Given the vague guidance regarding shingle manufacturers and colors, our clients reviewed and selected a color for their roof which they believed to be well within the parameters provided by the ACC. Their color decision was bolstered by the fact that roofs throughout the Association include various shades of brown and gray. A sampling of the variety of roof colors is included along with this letter. The members of the Board also have the ability to take visual notice of these variations by walking or driving through the community.

Given that the ACC offered a general written approval for roof replacements which are within the guidelines, it is our office's opinion that the ACC has waived its right of review regarding our clients' roof. Pursuant to Article XI, Section 1(c) of the Declaration, decisions of the ACC shall be by majority vote. Our client was not apprised of any such vote, nor is it apparent that any decision was made by the ACC. Our client has been given no notice of any hearing or meeting in which the issue of their roof is part of the agenda. As a result, our clients and this office are unsure what process, if any, the ACC and Board are following.

At the present time, it is apparent that the matter is before the Board; however, it is not clear how this matter is properly before the Board. Article IX, Section 7 of the Declaration addresses appeals of ACC decisions. In that process, dissatisfied owners may place matters before the Board, but that has not occurred in this instance.

On October 19, 2018, our client received a troubling email purportedly from the "HOA Board" indicating that a decision will be made by the end of the month. In that email, Mr. Denenberg states that Weatherwood or Drift Wood are "the only colors that have been approved by the Board." That is an incorrect statement. In fact, the Board approved the Architectural Guidelines, not particular colors for shingles. The guidelines approve "Tamko Weathered Wood or similar manufacturer and color." Let us not forget that the ACC already approved in writing our clients' roof along with a host of other roofs within the Association. The email of October 19 correctly acknowledges the color variation throughout the neighborhood. That acknowledgment is appropriate to highlight in the context of this discussion. A question will arise, if this matter proceeds, about whether the ACC is acting arbitrarily when approving or disapproving roof materials and colors.

If the Board is to issue a decision regarding our clients' roof, it is the expectation of this office that the decision will be a resounding approval and recognition that our client is well within the covenants and ACC guidelines. This matter has been delayed for no apparent reason. It has caused significant and undue stress for our clients. They have been waiting to have their solar panels reinstalled and have again delayed that reinstallation due to the ACC and Board action. This is a direct loss to our client and for no apparent or cognizable reason. As you are aware, our clients have respected and complied with rules and regulations historically and, most recently, with the approval of the repainting of their home.

Our clients look forward to the decision of the Board. They retain all rights available to them under the Declaration, rules and regulations, and all rights at law and in equity. Our office would be pleased to discuss this matter with the Board or its representative. Communications may be directed to my attention at the Fort Collins address above or via email at kward@wicklaw.com.

We look forward to your prompt attention to and resolution of this matter.

Sincerely,

WICK & TRAUTWEIN, LLC

A handwritten signature in cursive script that reads "Kevin William Ward".

Kevin William Ward, Esq.

