

# Sometimes a Rock Cliff is just a Rock

## Cliff

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Even if you have a fascination with some of the interesting cases and disputes that can arise within a community, many times the application of the law is straight-forward—follow what the association’s governing documents say!

A homeowner brought suit against Konert Farms Homeowners’ Association (“Association”) asserting the Association was responsible for the maintenance of a limestone rock wall that was located on her lot because the declaration says that the Association is responsible for the retaining walls throughout the subdivision. Our litigation team successfully argued that retaining walls, using the plain and ordinary meaning, meant something built and did not encompass a naturally occurring limestone rock wall.

The owner appealed and the Eastern District issued its opinion (<https://law.justia.com/cases/missouri/court-of-appeals/2020/ed108092.html>). Within a week of oral argument, the Court upheld the trial court and sided with the Association’s arguments and application of the law because it can be readily discerned by plain and ordinary language, and no rule of contract interpretation can contradict the plain and unambiguous language of the subdivision Declaration, or the “inescapable factual absence of retaining walls in Appellant’s backyard.” As Sigmund Freud put it, “sometimes a cigar is just a cigar,” and as the Eastern District put it, sometimes a rock cliff is just a rock cliff.

While this dispute may have the feeling of a law school academic exercise, this case still presents lessons and guidance. One, it is vital for owners and associations to have a clear understanding of what components of the association are maintained by whom and who would be responsible for payment. If the declaration had sufficient clarity, the owner would not have had any reasonable basis to think the association was responsible.

Two, it is vital for an association to understand its duties and obligations. If a declaration clearly requires an association to do something, say, maintain and repairs roofs, then the association needs to do so in a reasonable manner. If it fails to do so, the association could be liable for water damage resulting from that failure to properly maintain the roof.

This affirmative duty to act can also be imposed by law (obligation to file taxes, for example). If a health department imposes an obligation to have, say, pool monitors to enforce social distancing guidelines, then the association has an affirmative obligation to do so in a reasonable manner. If not, an association could be exposed to a negligence claim.

Yes, a cigar is just a cigar and so are the rules of contract interpretation and negligence.