

## AGD Trustee Limited v Millbrook Country Club Limited [2023] NZHC 2141

### This High Court decision helps to simplify the approval process under a restrictive covenant where there is a resident's society in place

ADG Trustee Limited (**ADG**) purchased a property at Mill Vista Lane (**Property**) in 2021. The Property is on the southern boundary of the Millbrook Resort development in Arrowtown (**Development**). The Property had a covenant registered against its title which, among other things, required ADG to obtain approval from the "Grantee" for any construction or landscaping that would occur on the Property. While Millbrook Country Club Limited (**Millbrook**) was the sole Grantee at the time the covenant was registered, subdivision and development meant that there were 40 titles and 91 owners considered to be Grantees.

ADG wanted to build on the Property that was not in keeping with the Millbrook design guidelines – as a result, they now needed to obtain approval from all of the Grantees.

ADG considered the requirement to obtain approval from all 91 owners to be unduly expensive and time consuming and therefore sought to modify the covenant so that ADG only required approval from Millbrook. This application was made pursuant to sections 316 and 317 of the Property Law Act 2007, which allows for modifications to restrictive covenants where:

- the modification would not substantially injure any party involved; and
- it is just and equitable to modify the covenant.

ADG's main argument for the modification not substantially injuring any other party was that they would still require approval from Millbrook, who represented most owners' interests and could be relied on by the owners to enforce compliance. Therefore,

there was a close alignment of interest between Millbrook and the owners.

ADG's application was further aided by the fact that no other owners, apart from a subset of three, opposed the application. The three owners that opposed the application as they wished to protect their views – they entered into a confidential settlement agreement with ADG.

The High Court ordered for the covenant to be modified so that the references to "Grantee" would be replaced with "Millbrook Country Club Limited."

#### Key takeaway

- The presence of a resident's society or other body that aligns the interest of benefitting parties can simplify the process of modifying restrictive covenants.

#### Want to know more?

If you have any questions please contact our specialist [Property team](#).