

**REAL PROPERTY**

**INJUNCTIVE RELIEF**  
Landscaping Encroachment



**BENCH DECISION:** Mixed.

**CASE/NUMBER:** Kenneth F. Kraus and Sharon F. Kraus, Trustees of the Kenneth F. Kraus Primary Residence Trust v. Norman M. Richards and Yvonne M. Richards as Trustees of the

Norman M. Richards Living Trust / 30-2008-00110083-CU-OR-CJC.

**COURT/DATE:** Orange Superior / May 10, 2010.

**JUDGE:** Hon. David R. Chaffee.

**ATTORNEYS:** Plaintiff - Stanley Feldsott (Feldsott & Lee, Laguna Hills). -

Defendant - Joshua M. Wolff (Wolff Law Corporation, Irvine).

**TECHNICAL EXPERTS:** Plaintiff - Samuel Knapp, arboriculture, Los Angeles.

Defendant - Robert Chavez, arboriculture, Riverside.

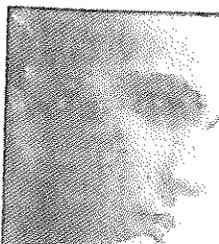
**FACTS:** Plaintiffs Kenneth and Sharon Kraus were neighbors of defendants Norman and Yvonne Richards in a Newport Beach gated community. The Krauses sued the Richards for alleged CC&R violations.

**PLAINTIFFS' CONTENTIONS:** The Krauses claimed that the Richards' shrubbery grew along a 2.5-foot wall on their shared property line, interfering with their view. They also sought a declaration that the Richards would be responsible for future damage to their drainage system that might be caused by other plants.

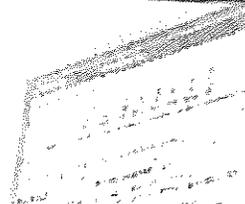
**DEFENDANTS' CONTENTIONS:** The Richards denied all allegations.

**DAMAGES:** The Krauses requested \$100,000 and injunctive relief.

**RESULT:** The court ordered both parties to maintain their shrubbery under three feet because the community was a "view" community, per the Declaration of Covenants, Conditions & Restrictions, and



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limited the shrubbery height, per the Newport Beach general plan. The court noted that small backyards in zero lot line view communities such as this, in the court's opinion, provide no reasonable expectations of privacy. On all other issues, the court found for the defendants.

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