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CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS and JOHN HARBISON

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Superior Court of California
County of Los Angeles

MAY 22 2015

Sherri R. Carter, Executive Officer/Clerk
By: Glorietta Robinson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS and JOHN HARBISON,

Plaintiffs,

vs.

CITY OF PALOS VERDES ESTATES, a municipal corporation; PALOS VERDES HOMES ASSOCIATION, a California corporation; ROBERT LUGLIANI and DELORES A. LUGLIANI, as co-trustees of THE LUGLIANI TRUST; THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012 and DOES 1 through 20,

Defendants,

Case No.: BS142768

(Assigned for all purposes to Hon. Barbara A. Meiers, Dept. 12)

OPPOSITION TO DEFENDANTS PALOS VERDES HOMES ASSOCIATION, ROBERT AND DOLORES LUGLIANI AND THOMAS J. LIEB'S JOINDER IN THE CITY OF PALOS VERDES ESTATES' CROSS-MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Hearing Date: May 29, 2015
Hearing Time: 9:30 a.m.
Department: 12

Action Filed: May 13, 2013
Trial Date: None Set

BY FAX

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MEMORANDUM OF POINT AND AUTHORITIES

On March 13, 2015, Defendant City of Palos Verdes Estates (the "City") filed a motion for summary judgment. On May 15, 2015, the same date that plaintiffs' opposition to the City's motion was due to be filed and served, the remaining defendants – Palos Verdes Homeowners Association, Thomas J. Lieb and Robert and Delores Lugliani – filed a "joinder" in the City's motion for summary judgment. Plaintiffs oppose the joinder on the following two procedural grounds:

First, the joinder is untimely and procedurally flawed. To properly join in a summary judgment motion, the remaining defendants were required to file their own separate statement of their own. (*Frazee v. Seely* (2002) 95 Cal.App.4th 627, 636). In addition the joinder is untimely because the remaining defendants did not provide plaintiffs 75 days notice of their joinder in the motion for summary judgment. (Code Civ. Proc., § 437c, subd.(a); *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 718). They only provided plaintiffs' 14 days notice of their intent to join in the motion.

Second, as to the causes of action for taxpayer's waste, that claim is only asserted against the City. The remaining defendants' joinder in that portion of the motion is improper.

As to the substance of the arguments, the joinder should be denied for the following reasons:

First, plaintiffs are entitled to declaratory relief against the City because the 2012 quitclaim deed conveying the Panorama Parkland from the City to the Association violated the 1940 deed restrictions limiting future conveyances. Specifically, the 1940 deed restrictions states that the property "shall not be sold or conveyed…except to a body suitably constituted by law to take, hold, maintain and regulate public parks…" (MF No. 6).[1] The Association is not presently a body that takes, holds, maintains or regulates parks. (MF Nos. 17-22). To the contrary, the Association has abdicated all of its parkland affairs to the City.

[1] All references herein to "MF" are to the material facts contained in the plaintiffs' opposition to the City's motion for summary judgment.

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(MF Nos. 17-22).[2] The violation of the 1940 deed restrictions renders the 2012 deed an ultra vires act that is void. (*Foxen v. City of Santa Barbara* (1913) 166 Cal. 77, 82). Plaintiffs are entitled to a judicial declaration confirming that the 2012 deed is void.

Second, plaintiffs are entitled to declaratory relief against the City because the 2012 quitclaim deed violated the 1940 deed restrictions that bar "improvements" that interfere with the public use and enjoyment of the Panorama Parkland by the public. The June 14, 1940 deeds state that, with written permission from the Association and a permit from the City, a property owner abutting the park may construct paths or landscaping on the conveyed property as a means of improving access to or views from such property. (MF No. 7). Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreation purposes. (MF No. 7). The 2012 quitclaim deed states in paragraph 6 that although the Panorama Parkland is to remain open space, should the owner of the Panorama Parkland obtain the necessary permits and approvals from the City, he "may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,'…" (MF No. 31). The owners of the Panorama Parkland intend these improvements to be used for private use. (MF No. 38). The City's affirmative statement authorizing these private improvements for private use violates the use restrictions of the 1940 deeds.

Third, the Court should reject the City's mootness argument. The City contends it does not own the Panorama Parkland based on the 2012 quitclaim deed to the Association and, therefore, any claim against the City is moot. However, the plaintiffs contend that the 2012 quitclaim deed is illegal and void. If the plaintiffs' arguments are accepted as true, the City never lost ownership of the Panorama Parkland and the 2012 quitclaim deed has no force and effect. The City still owns the parkland today. Whether the City currently owns the parkland is a key issue to be resolved by this Court and certainly presents a live controversy.

[2] Likewise, the ultimate recipient of legal title to the parkland, Thomas J. Lieb is not a "body suitably constituted by law to take, hold maintain and regulate public parks." (MF Nos. 34-37). Nor is the Luglianis' family trust that holds the beneficial interest in the parkland. (MF Nos. 34-37).

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Fourth, the Court should not accept the City's argument that the sole remedy for violation of the 1940 deed restrictions is the Association's power to enforce reversionary interest. The face of the 1940 deeds confirms that every lot owner in Palos Verdes Estates has standing to enforce a breach of the 1940 deeds restrictions. The City's argument that the Association's power of reversion is exclusive is specious.

Fifth, the Court should not accept the City's merger argument. The 2012 deed states on its face that the parties do not intend any merger to occur. Moreover, the burden of proving what the parties intended regarding merger rests with the City and the City has provided no evidence of the parties' on this point.

Sixth, the Court should reject the City's argument that no action for injunctive relief under Code of Civil Procedure, section 526a (hereinafter, "Section 526a") is available to plaintiffs. This Court has already ruled that a City that violates public trust by allowing donated parkland to be converted to public use may be enjoined under Section 526a.

For the foregoing reasons, plaintiffs respectfully request that the joinder in the City's motion for summary judgment be denied.

DATED: May 20, 2015

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By:

Jeffrey Lewis

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