

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 22 2015

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

1 Jeffrey Lewis (SBN 183934)
2 Kelly Broedlow Dunagan (SBN 210852)
3 **BROEDLOW LEWIS LLP**
4 734 Silver Spur Road, Suite 300
5 Rolling Hills Estates, CA 90274
6 Tel. (310) 935-4001
7 Fax. (310) 872-5389
8 E-Mail: Jeff@BroedlowLewis.com

9 Attorney for Plaintiffs
10 **CITIZENS FOR ENFORCEMENT OF**
11 **PARKLAND COVENANTS and JOHN**
12 **HARBISON**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

15 **CITIZENS FOR ENFORCEMENT OF**
16 **PARKLAND COVENANTS and JOHN**
17 **HARBISON,**

18 Plaintiffs,

19 vs.

20 **CITY OF PALOS VERDES ESTATES, a**
21 **municipal corporation; PALOS VERDES**
22 **HOMES ASSOCIATION, a California**
23 **corporation; ROBERT LUGLIANI and**
24 **DELORES A. LUGLIANI, as co-trustees**
25 **of THE LUGLIANI TRUST; THOMAS J.**
26 **LIEB, TRUSTEE, THE VIA**
27 **PANORAMA TRUST U/DO MAY 2,**
28 **2012 and DOES 1 through 20,**

Defendants,

) Case No.: BS142768

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

) **REPLY SEPARATE STATEMENT OF**
) **UNDISPUTED MATERIAL FACTS IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR SUMMARY JUDGMENT OR**
) **SUMMARY ADJUDICATION OR BOTH**

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

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

BY FAX

BROEDLOW LEWIS LLP
www.BroedlowLewis.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>Issue No. 1. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction that the Panorama Parkland be Used and Administered “Forever” for Park Purposes.</p> | | |
| <p>1. This litigation concerns the ownership and use of undeveloped parkland located on Via Panorama in the City of Palos Verdes (the “Panorama Parkland” or “Area A.”)</p> <p>Declaration of John Harbison (“Harbison Decl.”), ¶ 4; Exhibit 1 [Second Amended Complaint].</p> | <p>1. Disputed as to characterization of land in question; Area A is not “parkland.” Area A consists of Lots in three Tracts in Palos Verdes (Tract 8652, 26341 and 7540. (Exhibit 3 to Evidence In Support of Plaintiffs’ Motion For Summary Judgment or Summary Adjudication or Both (“Plaintiffs’ Evidence”). Each of those Tracts are part of the Business and Public Use Districts Class F under Declaration No. 1. (Declaration of Sid Croft In Support of Opposition</p> | <p>1. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is “parkland.” MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation purposes...”</p> <p>Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| | <p>to Plaintiffs' Motion for Summary Judgment or Summary Adjudication or Both ("Croft Decl.") ¶ 34; Exhibit A to Croft Decl. (Declaration No. 1).) The Class F designation permits the following uses:</p> <p style="padding-left: 40px;">"no building, structure or premises shall be erected, constructed or designed or intended to be used for any purpose other than that of a public or private school, playground, park, aeroplane or dirigible landing field or accessory aerodrome or repair shop, public art gallery, museum, library, firehouse, nursery, or greenhouse or other public or semi-public building, or a single family dwelling."</p> <p style="padding-left: 40px;">Croft Decl. Exhibit A (Article IV, Zoning, Section 9, Business and Public Use Districts Class F). Given the broad array of permitted uses, it is</p> | <p>parkland. (Ex. 12, p. 4 [...900 Via Panorama ("Via Panorama Property") is owned by the Property Owner and located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides.].) This factual recital creates a conclusive presumption in the truth of the fact: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest..." (Evid. Code, § 622).</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| | incorrect to characterize Area A as "Parkland." | |
| <p>2. The Panorama Parkland is located to the North/Northwest of the residential property at 900 Via Panorama, Palos Verdes Estates, California 90274.</p> <p>Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].</p> | <p>2. Undisputed as to location; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>2. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is "parkland." MF No. 37 which is undisputed states:</p> <p>The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for park and/or recreation purposes..."</p> <p>Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 ["...900 Via Panorama ("Via Panorama Property")</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | | <p>is owned by the Property Owner and located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides.”.] This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |
| <p>3. The Panorama Parkland is an irregularly shaped parcel in the form of a crescent that wraps around the residential property at 900 Via Panorama.</p> <p>Harbison Decl., ¶ 5; Exhibit</p> | <p>3. Undisputed as to description; Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>3. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is “parkland.” MF No. 37 which is undisputed states: The June 14, 1940 deeds</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|--|
| 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map]. | | state that the transferred property “is to be used and administered forever for park and/or recreation purposes...” Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [“...900 Via Panorama (“Via Panorama Property”) is owned by the Property Owner and located at the end of a cul-du-sc and is adjacent to City-owned parkland on three sides.”].) This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | | <p>parties thereto, or their successors in interest..." (Evid. Code, § 622).</p> |
| <p>4. The boundaries of the Panorama Parkland cross three different tract lines and, therefore, the Panorama Parkland falls within the following three different tracts within the City of Palos Verdes Estates ("City"): 7540, 8652 and 26341.</p> <p>Harbison Decl., ¶ 5; Exhibit 2 [Area Map]; Exhibit 3 [Legal Description]; Exhibit 4 [Bolton Engineering Map].</p> | <p>4. Undisputed as to boundary description; Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>4. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is "parkland." MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for park and/or recreation purposes..." Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [...900 Via Panorama</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| | | <p>(“Via Panorama Property”) is owned by the Property Owner and located at the end of a cul-du-sc and is adjacent to City-owned parkland on three sides.”.)] This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |
| <p>5. At no time has there been signs or notices posted on the Panorama Parkland restricting access or use of the property to residents of the City.</p> | <p>5. See Evidentiary Objection No. 4 to Harbison Decl. (lack of foundation; lack of personal knowledge); Irrelevant; Disputed as to characterization of Area A as “parkland” (see Defendants’</p> | <p>5. Harbison is a long time resident of Palos Verdes Estates and lives on the same street as the Panorama Parkland. Harbison’s declaration establishes his personal knowledge about the lack of signs on the park.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| Harbison Decl., ¶ 9. | Response to Fact 1 above). | <p>Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is “parkland.” MF No. 37 which is undisputed states:</p> <p style="padding-left: 40px;">The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation purposes...”</p> <p>Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [“...900 Via Panorama (“Via Panorama Property”) is owned by the Property</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| | | <p>Owner and located at the end of a cul-du-sc and is adjacent to City-owned parkland on three sides.”.] This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |
| <p>6. At no time has there been signs or notices posted on the Panorama Parkland restricting access or use of the property to members of the Palos Verdes Homes Association (“Association.”)</p> | <p>6. See Evidentiary Objection No. 5 to Harbison Decl. (lack of foundation; lack of personal knowledge); Irrelevant; Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>6. Harbison is a long time resident of Palos Verdes Estates and lives on the same street as the Panorama Parkland. Harbison’s declaration establishes his personal knowledge about the lack of signs on the park. Given that the defendants agree that the 1940</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|--|
| Harbison Decl., ¶ 10. | | <p>restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is “parkland.” MF No. 37 which is undisputed states:</p> <p style="padding-left: 40px;">The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation purposes...”</p> <p>Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [“...900 Via Panorama (“Via Panorama Property”) is owned by the Property Owner and located at the end of a cul-du-sc and is</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | | <p>adjacent to City-owned parkland on three sides.”.] This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |
| <p>7. On May 16, 1923, the Association was formed.</p> <p>Harbison Decl., ¶ 12.</p> | <p>7. Undisputed</p> | <p>7.</p> |
| <p>8. On June 25, 1923, the Association enacted its bylaws.</p> <p>Harbison Decl., ¶ 12; Exhibit 5, p. 39.</p> | <p>8. Undisputed</p> | <p>8.</p> |
| <p>9. On July 5, 1923, the developer for Palos</p> | <p>9. Undisputed</p> | <p>9.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>Verdes Estates recorded Declaration No. 1 establishing basic land use restrictions for real property within what would later be known as the City.</p> <p>Harbison Decl., ¶ 13; Exhibit 5, p. 13.</p> | | |
| <p>10. The land use restrictions recorded on July 5, 1923 were amended and supplemented several times after July 5, 1923.</p> <p>Harbison Decl., ¶ 14.</p> | <p>10. Undisputed</p> | <p>10.</p> |
| <p>11. On July 26, 1926, Bank of America recorded Declaration No. 25 establishing the conditions,</p> | <p>11. Undisputed</p> | <p>11.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>covenants and restrictions for Tract 8652.</p> <p>Harbison Decl., ¶ 15; Exhibit 5, p. 9.</p> | | |
| <p>12. Declaration No. 25 describes the purpose of the Association as follows:</p> <p>To carry on the common interest and look after the maintenance of all lots and the welfare of all lot owners right from the beginning, a community association, with the name of Palos Verdes Homes Association, has been incorporated as a non-stock, non-profit body under the laws of California, in which every building site has one vote. It will be the duty of this body to maintain the parks, street planting and other community affairs, and to perpetuate the restrictions.</p> <p>Exhibit 5, p. 3.</p> | <p>12. Undisputed as to quote; Disputed as phrased – the quote does not state that it is the “purpose of the Association”</p> | <p>12. Defendants offer no evidence to dispute. This dispute is contrived and does not warrant denial of the motion.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>13. Declaration No. 25 provides that the land use restrictions “are for the benefit of each owner of land...”</p> <p>Exhibit 5, p. 10.</p> | <p>13. Disputed – Exhibit is not Declaration No. 25, rather it is “Amendment No. 10 to Declaration No. 20 of Establishment... and Declaration No. 25 of Establishment” and exhibit does not contain such quote on page 10; rather the correct quote under “Amendment to Declaration No. 20”, states:</p> <p>“Now, Therefore, Know All Men By These Presents: That Bank of America hereby certifies and declares that in addition and supplemental to the basic plan set forth in said “Declaration No. 1” it has established and does hereby establish the local plan for the</p> <p>protection, maintenance, development and improvement of said</p> | <p>13. This “dispute” is contrived. The quote provided by defendants also provides that the land use restrictions are for the benefit of each owner of land.</p> <p>See bolded portion of defendants’ quote below.</p> <p>“Now, Therefore, Know All Men By These Presents: That Bank of America hereby certifies and declares that in addition and supplemental to the basic plan set forth in said “Declaration No. 1” it has established and does hereby establish the local plan for the</p> <p>protection, maintenance, development and improvement of said Tract 8652, and has fixed and does hereby fix the local protective restrictions, conditions, covenants, reservations, liens and charges upon and subject to which all lots, parcels and portions of said tract shall be held, leased or sold and/or conveyed by it as such owner, each and all of which is and are for the benefit of all of said tract and of each owner</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| | <p>Tract 8652, and has fixed and does hereby fix the local protective restrictions, conditions, covenants, reservations, liens and charges upon and subject to which all lots, parcels and portions of said tract shall be held, leased or sold and/or conveyed by it as such owner, each and all of which is and are for the benefit of all of said tract and of each owner of land therein and shall inure to and pass with said tract and each and every parcel of land therein and shall apply to and bind the respective successors in interest of the present owners thereof, and are and each thereof is imposed upon said realty as a servitude in favor of said property, and each and every parcel of land therein as the dominant tenement or tenements, as follows, to-wit:"</p> | <p>of land therein and shall inure to and pass with said tract and each and every parcel of land therein and shall apply to and bind the respective successors in interest of the present owners thereof, and are and each thereof is imposed upon said realty as a servitude in favor of said property, and each and every parcel of land therein as the dominant tenement or tenements, as follows, to-wit:"</p> |
| <p>14. Declaration No. 25 provides that a breach of the restrictions shall cause the property to</p> | <p>14. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1.</p> | <p>14. This “dispute” is contrived. The quote provided by defendants also provides that a breach of the restrictions shall</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>revert to the Association.</p> <p>Exhibit 5, § 6, pp. 22-23.</p> | <p>Article VI, Section 6 (page 23 of Exhibit 5) provides:</p> <p>“A breach of any of the restrictions, conditions and covenants hereby established shall cause the real property upon which such breach occurs to revert to the Commonwealth Trust Company or its successor in interest as owner of the reversionary rights therein provided for, and the owner of such reversionary shall have the right of immediate re-entry upon such real property, in the event of any such breach;”</p> | <p>cause the property to revert to the Association.</p> <p>See bolded portion of defendants’ quote below.</p> <p>“A breach of any of the restrictions, conditions and covenants hereby established shall cause the real property upon which such breach occurs to revert to the Commonwealth Trust Company or its successor in interest as owner of the reversionary rights therein provided for, and the owner of such reversionary shall have the right of immediate re-entry upon such real property, in the event of any such breach;”</p> |
| <p>15. Declaration No. 25 provides that any breach of the restrictions can be enjoined by the Association or by any property owner in the Association.</p> | <p>15. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 8 of Declaration No. 1 (page 23 of Exhibit 5) does not provide for</p> | <p>15. This “dispute” is contrived. The quote provided by defendants also provides that any breach of the land use restrictions can be enjoined by the Association or by any property owner. See bolded portion of</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>Exhibit 5, § 8, p. 23.</p> | <p>enjoining:</p> <p>“Every act or omission, where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive.”</p> | <p>defendants’ quote below</p> <p>“Every act or omission, where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive.”</p> |
| <p>16. Declaration No. 25 provides that a breach of the restrictions shall constitute a nuisance which may be abated by either the Association or any lot owner subject to the Association’s jurisdiction.</p> | <p>16. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 8 of Declaration No. 1 (page 23 of Exhibit 5) is quoted in its entirety above at Response to Fact No</p> | <p>16. This “dispute” is contrived. The quote provided by defendants also provides that any breach of the land use restrictions can be enjoined by the Association or by any property owner. See bolded portion of defendants’ quote below</p> <p>“Every act or omission,</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>Exhibit 5, § 8, p. 23.</p> | <p>15.</p> | <p>where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive.”</p> |
| <p>17. Declaration No. 25 provides that the provisions of the declaration “shall bind and inure to the benefit of and be enforceable by” the Association or “by the owner or owners of any property in said tract...”</p> <p>Exhibit 5, § 12, p. 24.</p> | <p>17. Disputed – Declaration 25 is not at Exhibit 5, page 23, rather it is Declaration No. 1. Article VI, Section 12 of Declaration No. 1 (page 24 of Exhibit 5) provides:</p> <p>“The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Commonwealth Trust Company, Palos Verdes Homes Association, by the owner or owners of any property in said tract, their, and each</p> | <p>17. This “dispute” is contrived. The quote provided by defendants also provides that any breach of the land use restrictions can be enjoined by the Association or by any property owner. See bolded portion of defendants’ quote below “The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Commonwealth Trust Company, Palos Verdes Homes Association, by the owner or owners of any property in said tract, their, and each of their, legal representatives, heirs, successors, assigns</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| | of their, legal representatives, heirs, successors, assigns and failure by the Commonwealth Trust Company, Palos Verdes Homes Association or any property owner, or their legal representatives, heirs, successors or assigns, to enforce any of such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the right to do so thereafter.” | and failure by the Commonwealth Trust Company, Palos Verdes Homes Association or any property owner, or their legal representatives, heirs, successors or assigns, to enforce any of such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the right to do so thereafter.” |
| 18. Plaintiff John Harbison (“Harbison”) owns property located within the City. Harbison Decl., ¶ 2. | 18. Undisputed | 18. |
| 19. Harbison has owned property located within the City since 1992. Harbison Decl., ¶ 2. | 19. Undisputed | 19. |
| 20. Harbison owns property that is | 20. Undisputed | 20. |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--------------------------------------|
| <p>1 subject to the</p> <p>2 Association's</p> <p>3 jurisdiction.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 Harbison Decl., ¶ 2.</p> | | |
| <p>8 21. Harbison is a</p> <p>9 member of the</p> <p>10 Association.</p> <p>11 Harbison Decl., ¶ 2.</p> | <p>21. Undisputed</p> | <p>21.</p> |
| <p>12 22. Harbison is a</p> <p>13 member of plaintiff</p> <p>14 Citizens for</p> <p>15 Enforcement of</p> <p>16 Parkland Covenants</p> <p>17 ("CEPC.")</p> <p>18</p> <p>19 Harbison Decl., ¶ 1.</p> | <p>22. Undisputed</p> | <p>22.</p> |
| <p>20 23. Harbison has paid</p> <p>21 property taxes</p> <p>22 annually since</p> <p>23 purchasing his</p> <p>24 property in 1992.</p> <p>25</p> <p>26 Harbison Decl., ¶ 2.</p> | <p>23. Undisputed</p> | <p>23.</p> |
| <p>27 24. In the late 1930's, the</p> | <p>24. Undisputed; see</p> | <p>24. If the fact is</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>Evidentiary Objection No. 7 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> <p>Objection to Exhibit 1 (SAC) to establish Fact 24. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>undisputed, the objections are meaningless. That said, plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | | <p>defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>25. To avoid this result, the Association deeded its parklands to the City and to the District between 1938 and 1940.</p> <p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani</p> | <p>25. Undisputed; see Evidentiary Objection No. 8 to Harbison Decl. (lack of foundation; lack of personal knowledge). Objection to Exhibit 1 (SAC) to establish Fact 25. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own</p> | <p>25. If the fact is undisputed, the objections are meaningless. That said, plaintiffs are entitled to rely on the verified pleadings as judicial admissions. The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>binding admission that cannot be disputed.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>26. The Association has</p> | <p>26. Disputed as to</p> | <p>26. This is a contrived</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>no current ownership of parklands.</p> <p>Harbison Decl., ¶ 18.</p> | <p>characterization of land at issue as “parkland” (see Defendants’ Response to Fact 1 above); see Evidentiary Objection No. 9 to Harbison Decl. (lack of foundation; lack of personal knowledge). Dispute as Irrelevant - Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Declaration of Brant H Dveirin (“Dveirin Decl.”), Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).)</p> | <p>“dispute.” Defendants own witness, attorney Sid Croft, declared that in the 1940, the Association “deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property.” (Croft. Decl., ¶ 20).</p> <p>The cited deposition of Harbison does not create a dispute. He did not testify that the Association currently owns property.</p> <p>Harbison testified that the Association is not a body that takes, holds and regulates parks. (Harbison Depo., p. 45, li. 6-9) He also testified that at one time the Association was a</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| | | <p>body that maintained parks, and could do so again but the Association no longer does so.</p> <p>(Harbison Depo., p. 45, li. 6-9) Harbison testified that it's "unlikely" that the Association would ever hold parkland again.</p> <p>(Harbison Depo., p. 46, li. 3-7).</p> |
| <p>27. Instead, the City has taken on both the ownership of and stewardship of the parks.</p> <p>Harbison Decl., ¶ 19.</p> | <p>27. Undisputed; see Evidentiary Objection No. 10 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>27. If this fact is undisputed than the evidentiary objections are meaningless and should be overruled.</p> <p>Defendants own witness declared that in the 1940, the Association "deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property." (Croft.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| | | Decl., ¶ 20). |
| <p>28. The City has established a Parklands Commission. Harbison Decl., ¶ 20.</p> | <p>28. Disputed as phrased. The City has established a Parklands Committee, which is an advisory body to the City Council. Declaration of Sheri Repp-Loadsman ("Repp Decl."), ¶ 5.</p> | <p>28. This is a contrived "dispute." The stated fact is true.</p> |
| <p>29. Applications by residents that would impact parklands are brought to the City's Parkland Commission and not the Association. Harbison Decl., ¶ 21.</p> | <p>29. Disputed. Only applications for some types of permits may be considered by the Parklands Committee for the Committee's non-binding recommendation to the City Council. Repp Decl., ¶ 5. See Evidentiary Objection No. 11 to Harbison Decl. (lack of foundation and personal knowledge).</p> | <p>This is a contrived "dispute." The stated fact is true.</p> |
| <p>30. Permits and</p> | <p>30. Disputed as</p> | <p>This is a contrived</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>enforcement actions concerning parklands involve the City and not the Association.</p> <p>Harbison Decl., ¶ 22.</p> | <p>incomplete. The City's permitting authority is limited to issuing permits under the PVEMC. Likewise, the City only enforces violations of the PVEMC. The City does not enforce private deed restrictions.</p> <p>Repp Decl., ¶ 6. See Evidentiary Objection No. 12 to Harbison Decl. (lack of foundation and personal knowledge).</p> | <p>“dispute.” The stated fact is true.</p> |
| <p>31. The Association is no longer a body that takes, holds, maintains and regulates public parks and has not done so since 1940.</p> <p>Harbison Decl., ¶ 23.</p> | <p>31. Disputed; Irrelevant. Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).)</p> | <p>31. This is a contrived “dispute.” There is no evidence that at anytime after 1940, the Association holds or maintains public parks.</p> <p>Defendants own witness, attorney Sid Croft,</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| | <p>SAC, pg. 15, para 36.c states that “the ASSOCIATION has the right and affirmative duty to enforce its reversion rights to Area A.”</p> <p>Plaintiffs’ SAC pleading is in direct dispute with Plaintiff Harbison’s declaration that the Association is not a body that can hold title to Area A. Harbison Decl., ¶ 23.</p> <p>Regardless as to whether the 1940s Deeds apply, the 1940 Deeds do not require the Association to currently take, hold, maintain and regulate parks – only to have the legal ability to do so. SAC, pg. 7, para.</p> | <p>declared that in the 1940, the Association “deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property.” (Croft. Decl., ¶ 20).</p> <p>The cited deposition of Harbison does not create a dispute. He did not testify that the Association currently owns property. Harbison testified that the Association is not a body that takes, holds and regulates parks. (Harbison Depo, p. 45, li. 6-9) He also testified that at one time the Association was a body that maintained parks, and could do so again but the Association no longer does so. (Harbison Depo, p. 45,</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | <p>14.i.-ii. [“it shall be the duty of [the Association] maintain the parks...”]; Harbison Decl., ¶ 30; Exhibit 6, p. 9, ¶ 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652] [The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...<u>except to a body suitably constituted by law to take, hold, maintain and regulate public parks”</u></p> | <p>li. 6-9) Harbison testified that it ‘s “unlikely” that the Association would ever hold parkland again. (Harbison Depo., p. 46, li. 3-7).</p> |
| <p>32. On June 14, 1940, the Association</p> | <p>32. Undisputed. Objection to Exhibit</p> | <p>32. If this fact is undisputed than the</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>conveyed a number of parks to the City in multiple grant deeds.</p> <p>Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>1 (SAC) to establish Fact 32. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>evidentiary objections are meaningless and should be overruled.</p> <p>Defendants own witness declared that in the 1940, the Association “deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property.” (Croft. Decl., ¶ 20).</p> |
| <p>33. The properties conveyed by the Association to the City on June 14, 1940 included the</p> | <p>33. Undisputed as to conveyance; Disputed as to characterization of Area A as “parkland” (see</p> | <p>33. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>Panorama Parkland. Harbison Decl., ¶ 24; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>Defendants' Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 33. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>dispute that the subject property is "parkland." MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for park and/or recreation purposes..." Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 ["...900 Via Panorama ("Via Panorama Property") is owned by the Property Owner and located at the end of a cul-du-sc and is adjacent to City-owned parkland on three sides."].) This factual recital creates</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | | <p>a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |
| <p>34. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540.</p> <p>Harbison Decl., ¶ 25; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19</p> | <p>34. Undisputed as to the fact; objection to the certain evidence: see Evidentiary Objection No. 13 to Harbison Decl. (lack of foundation; lack of personal knowledge); none of the following cited exhibits establish the fact at issue - Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li.</p> | <p>34. If the fact is undisputed, the evidentiary objection is meaningless and should be overruled. Notably the stated fact is supported by the defendants’ own witness, attorney Sid Croft, who declares that in 1940 “the Association deeded all lands under its control the new City....The transfer of the properties to the City was accomplished with two (2) deeds from the Association, dated June</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>[Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint]. Objection to Exhibit 1 (SAC) to establish Fact 34. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>1940 ("1940 Deeds"), which are exhibits 6 and 7 to Plaintiffs' Evidence. Those deeds include Lot A of Tracts 8652 and 7540. (Croft Decl., ¶ 20). The original evidence submitted by plaintiffs do support this material fact. That said, plaintiffs are entitled to rely on the verified pleadings as judicial admissions. "When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error." (<i>Valerio v. Andrew</i></p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| | | <p><i>Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>35. The properties conveyed by the Association to the City on June 14,</p> | <p>35. Undisputed as to the fact; objection to the certain evidence: see Evidentiary Objection</p> | <p>35. If the fact is undisputed, the evidentiary objection is meaningless and should be overruled.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>1940 included Lot A of Tract 8652.</p> <p>Harbison Decl., ¶ 26;</p> <p>Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 6, p. 3,</p> <p>Item 5 [June 14, 1940 deed for Lot A of Tract 7540];</p> <p>Exhibit 7, p. 2, Item 7 (b), [June 14, 1940 deed for Lot A of Tract 8652]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint];</p> <p>Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>No. 14 to Harbison Decl. (lack of foundation; lack of personal knowledge);</p> <p>none of the following cited exhibits establish the fact at issue –</p> <p>Exhibit 6, p. 3, Item 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> <p>Objection to Exhibit 1 (SAC) to establish Fact 35. Exhibit 1 is Plaintiffs' Second Amended Complaint.</p> <p>Plaintiffs cannot rely upon their own</p> | <p>Notably the stated fact is supported by the defendants' own witness, attorney Sid Croft, who declares that in 1940 "the Association deeded all lands under its control the new City....The transfer of the properties to the City was accomplished with two (2) deeds from the Association, dated June 1940 ("1940 Deeds"), which are exhibits 6 and 7 to Plaintiffs' Evidence. Those deeds include Lot A of Tracts 8652 and 7540. (Croft Decl., ¶ 20).</p> <p>The original evidence submitted by plaintiffs do support this material fact.</p> <p>That said, plaintiffs are entitled to rely on the</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|--|--|
| | pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4 th 704, 720.) | verified pleadings as judicial admissions. “When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271) The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | | <p>disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>36. The June 14, 1940 deeds conveying property from the Association to the City included restrictions on the future use and ownership of the conveyed property.</p> <p>Harbison Decl., ¶ 27; Exhibit 6, pp. 7, 9 and 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, pp. 4, 7 and 8 [June 14, 1940 deed for Lot A of Tract</p> | <p>36. Undisputed as to the 1940s Deeds; Disputed as to the characterization of the Deed terms.</p> | <p>36. No facts are offered by defendants here nor is the mischaracterization described. This opposition is insufficient to create a triable issue of fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--------------------------------------|
| 8652]. | | |
| <p>37. The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation purposes...”</p> <p>Harbison Decl., ¶ 28; Exhibit 6, p. 7 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 4 [June 14, 1940 deed for Lot A of Tract 8652].</p> | 37. Undisputed. | 37. |
| <p>38. The June 14, 1940 deeds state that as to the transferred real property “no buildings, structures or concessions shall be erected, maintained or permitted” on the</p> | 38. Undisputed. | 38. |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”</p> <p>Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 deed for Lot A of Tract 8652].</p> | | |
| <p>39. The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...except to a body suitably constituted by law to take, hold, maintain and regulate public</p> | <p>39. Disputed as incomplete. Complete section states:</p> <p>“except to a body suitably constituted by law to take, hold, maintain and regulate public parks; <u>provided</u>, that portions of said realty may be dedicated to the public for parkway and/or street purposes.”</p> <p>Exhibit 6, p. 9, ¶ 5</p> | <p>39. The omitted language does not warrant denial of the motion.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>parks...”</p> <p>Harbison Decl., ¶ 30;</p> <p>Exhibit 6, p. 9, ¶ 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652].</p> | <p>[June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652]</p> | |
| <p>40. 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. Such improvements must not impair or interfere with the use</p> | <p>40. Disputed as phrased; the 1940s Deeds do not require a permit to be obtained:</p> <p>“That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty to construct and/or maintain paths, steps and/or other landscape improvements, as a means of egress from and ingress to said lot or for the improvement of views under such rules and regulations as will not, in the opinion of said municipality or other body and of Palos</p> | <p>40. The deed language speaks for itself.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>and maintenance of said realty for park and/or recreation purposes.</p> <p>Harbison Decl., ¶ 31; Exhibit 6, p. 9, ¶ 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 6 [June 14, 1940 deed for Lot A of Tract 8652].</p> | <p>Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreational purposes, as herein-before set forth.”</p> <p>Exhibit 6, p. 9, ¶ 6 [June 14, 1940 Deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 6 [June 14, 1940 Deed for Lot A of Tract 8652].</p> <p>See Evidentiary Objection No. 15 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | |
| <p>41. The June 14, 1940 deeds state that none of the use or ownership restrictions set forth in the June 14, 1940 deeds may be changed by the City or the Association</p> | <p>41. Disputed as phrased – the 1940s Deeds do not prohibit any modification of the covenants and restrictions, only modification via certain procedures: “That none of the</p> | <p>41. The quoted language confirms that in 1940, the Association eliminated its own ability to modify restrictions.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--------------------------------------|
| <p>1 even if the</p> <p>2 Association complies</p> <p>3 with its own internal</p> <p>4 procedures for</p> <p>5 modifying land use</p> <p>6 restrictions and</p> <p>7 obtains the written</p> <p>8 consent of two-thirds</p> <p>9 of the property</p> <p>10 owners.</p> <p>11 Harbison Decl., ¶ 32;</p> <p>12 Exhibit 6, p. 9, ¶ 7 [June 14,</p> <p>13 1940 deed for Lot A of</p> <p>14 Tract 7540]; Exhibit 7, p. 5,</p> <p>15 ¶ 7 [June 14, 1940 deed for</p> <p>16 Lot A of Tract 8652].</p> | <p>1 conditions,</p> <p>2 restrictions,</p> <p>3 covenants and</p> <p>4 reservations set forth</p> <p>5 in paragraphs 3 to 6,</p> <p>6 inclusive, hereof may</p> <p>7 be changed or</p> <p>8 modified by the</p> <p>9 procedure established</p> <p>10 in Section 3 or Article</p> <p>11 VI of said</p> <p>12 Declaration of</p> <p>13 Establishment of</p> <p>14 Basic Protective</p> <p>15 Restrictions, and in</p> <p>16 that certain section,</p> <p>17 entitled "Modification</p> <p>18 of Restrictions", of</p> <p>19 Declarations Nos. 2,</p> <p>20 4, 5, 6, 12 and 27 of</p> <p>21 Establishment of</p> <p>22 Local Protective</p> <p>23 Restrictions</p> <p>24 hereinafter referred</p> <p>25 to." Exhibit 6, p. 9, ¶</p> <p>26 7 [June 14, 1940</p> <p>27 Deed for Lot A of</p> <p>28 Tract 7540]; Exhibit</p> <p>7, p. 5, ¶ 7 [June 14,</p> <p>1940 Deed for Lot A</p> <p>of Tract 8652</p> <p>See Evidentiary Objection</p> <p>No. 16 to Harbison Decl.</p> <p>(lack of foundation; lack of</p> <p>personal knowledge).</p> | |
| <p>42. The June 14, 1940</p> <p>deeds state any</p> <p>breach of the use or</p> <p>ownership</p> <p>conditions "shall</p> <p>cause said realty to</p> | <p>42. Undisputed; Incorrect</p> <p>citation to evidence –</p> <p>neither p. 10 of Exhibit</p> <p>6 nor page 6 of Exhibit</p> <p>7 provide support for</p> <p>the fact. Citations</p> | <p>42.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--------------------------------------|
| <p>revert to the” Association.</p> <p>Harbison Decl., ¶ 33; Exhibit 6, p. 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 6 [June 14, 1940 deed for Lot A of Tract 8652].</p> | <p>should be to page 9 of Exhibit 6 and page 5 of Exhibit 7.</p> | |
| <p>43. The June 14, 1940 deeds state that the deed restrictions “inure to and pass with said property and each and every parcel of land therein, and shall apply to and bind the respective successors in interest of the parties hereto, and are...imposed upon said realty as a servitude in favor of said property and</p> | <p>43. Undisputed.</p> | <p>43.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| <p>each and every parcel of land therein as the dominant tenement or tenements.”</p> <p>Harbison Decl., ¶ 34; Exhibit 6, p. 10 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 6 [June 14, 1940 deed for Lot A of Tract 8652].</p> | | |
| <p>44. The June 14, 1940 deeds do not contain any express provision authorizing the City or Association to “swap” parkland properties.</p> <p>Harbison Decl., ¶ 35; Exhibit 6 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7 [June 14, 1940 deed for Lot A of Tract 8652].</p> | <p>44. Disputed. The June 14, 1940 Deed (Plaintiffs’ Evidence Exhibit) at page 3, section 2, incorporates the provisions, covenants, restrictions and covenants of 1931 Deed from Bank of America to Palos Verdes Homes Association (book 10494, page 360. (Croft Decl. Exh. B). The 1931 Deed</p> | <p>44. This dispute is contrived. The 1940 deeds do not contain any express provision authorizing the City or Association to “swap” parkland properties. Defendants offer no contrary evidence. Instead, defendants rely on completely different documents, signed earlier in time and provide more general powers of the Association to convey</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | <p>expressly provides that the Palos Verdes Homes Association can “re-convey title to portions of said realty ... in exchange for other lands.” (Croft Decl. Exhibit B, Section 5).</p> <p>Not a proper fact; see Evidentiary Objection No. 17 to Harbison Decl. (lack of foundation; lack of personal knowledge); Disputed as to characterization of land at issue as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>properties. Specifically, defendants rely on 1931 deeds for this “swap” authority. Plaintiffs do not dispute the fact that the Association had broad powers in 1931 to swap properties. The Association self-limited that “swap” power nine years later in 1940 when it deeded the Panorama Parkland to the City. The “forever park” and other restrictions were so important to the Association that the Association took the extra step of imposing a two-thirds voting requirement to release the restrictions.</p> |
| <p>45. The June 14, 1940 deeds do not contain any express provision</p> | <p>45. Not a proper fact; see Evidentiary Objection No. 18 to Harbison</p> | <p>45. Defendants have offered no evidence in opposition to this fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| <p>1 authorizing the City</p> <p>2 or Association to</p> <p>3 convey parks as part</p> <p>4 of a resolution of</p> <p>5 litigation.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Harbison Decl., ¶ 36;</p> <p>10 Exhibit 6 [June 14, 1940</p> <p>11 deed for Lot A of Tract</p> <p>12 7540]; Exhibit 7 [June 14,</p> <p>13 1940 deed for Lot A of</p> <p>14 Tract 8652].</p> | <p>Decl. (lack of</p> <p>foundation; lack of</p> <p>personal knowledge).</p> | |
| <p>15 46. The June 14, 1940</p> <p>16 deeds do not contain</p> <p>17 any express provision</p> <p>18 authorizing the City</p> <p>19 or Association to</p> <p>20 convey parks to fund</p> <p>21 budgetary shortfalls</p> <p>22 for school districts.</p> <p>23</p> <p>24 Harbison Decl., ¶ 37;</p> <p>25 Exhibit 6 [June 14, 1940</p> <p>26 deed for Lot A of Tract</p> <p>27 7540]; Exhibit 7 [June 14,</p> | <p>46. Not a proper fact; see</p> <p>Evidentiary Objection</p> <p>No. 19 to Harbison</p> <p>Decl. (lack of</p> <p>foundation; lack of</p> <p>personal knowledge).</p> | <p>46. Defendants have</p> <p>offered no evidence in</p> <p>opposition to this fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| 1940 deed for Lot A of Tract 8652]. | | |
| 47. The City passed Resolution No. 12 formally accepting the deeds and confirming the land use restrictions. Harbison Decl., ¶ 38, Exhibit 8 [Resolution No. 12]. | 47. Undisputed. | 47. |
| 48. Resolution No. 12 re-states verbatim each of the land use restrictions set forth in Fact Numbers 37 through 43 above. Harbison Decl., ¶ 38; Exhibit 8, pp. 11-12 [Resolution No. 12]. | 48. Undisputed; see Responses to Facts 40 and 41 (Disputed). | 48. |
| 49. The City's Municipal Code makes it clear that a private | 49. Not a proper fact. Disputed. The cited PVEMC sections do | 49. The municipal code sections speak for themselves. Plaintiffs |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>person's use of public parkland for private purposes is a city nuisance. (City of PVE Mun. Code, §§ 17.32.050, 18.16.020).</p> <p>Request for Judicial Notice, Exhibits A and B.</p> | <p>not state this. PVEMC 17.32.050, Violation – Nuisance, states: Any building or structure erected or maintained, or any use of property, contrary to these provisions of this title and PVEMC Title 18 shall be unlawful and a public nuisance and the city attorney shall, upon order of the city council, immediately commence action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building, structure or use, and restrain and enjoin any person from setting up, erecting or maintaining such building or structure,</p> | <p>request that their unopposed request for judicial notice be granted.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| | <p>or using any property contrary to the provisions of this title and PVEMC Title 18. It shall be the right and duty of every citizen to participate and assist the city officials in the enforcement of the provisions of this title and PVEMC Title 18.</p> <p>PVEMC 18.16.020 simply states the various uses allowed in the OS zone.</p> <p>See Request for Judicial Notice, Exhibit E.</p> <p>Disputed as to characterization of land in question as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>50. The City Municipal Code declares it is the “right and duty” of all residents to “participate and assist the city officials” in the enforcement of the</p> | <p>50. Not a proper fact; Immaterial; Disputed as incomplete. In order to bring an enforcement action under the PVEMC, the City Council must first declare a nuisance, and</p> | <p>50. The municipal code sections speak for themselves. Plaintiffs request that their unopposed request for judicial notice be granted.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>City's zoning and building codes. (City of PVE Mun. Code, § 17.32.050).</p> <p>Request for Judicial Notice, Exhibit A.</p> | <p>then order the City Attorney to commence an action to abate the nuisance.</p> <p>Request for Judicial Notice, Exhibit E.</p> | |
| <p>51. Similarly the Municipal Code requires the city attorney to commence legal proceedings and take other legal steps to remove illegal structures and abate illegal uses of public parklands. (City of PVE Mun. Code, § 17.32.050).</p> <p>Request for Judicial Notice, Exhibit A.</p> | <p>51. Not a proper fact; Immaterial; Disputed as incomplete. In order to bring an enforcement action under the PVEMC, the City Council must first declare a nuisance, and then order the City Attorney to commence an action to abate the nuisance.</p> <p>Request for Judicial Notice, Exhibit E.</p> <p>Disputed as to characterization of land in question as "public parkland" (see Defendants'</p> | <p>51. The municipal code sections speak for themselves. Plaintiffs request that their unopposed request for judicial notice be granted.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| | Response to Fact 1 above). | |
| <p>52. The prior and current owners of 900 Via Panorama have paid for and constructed encroachments on the Panorama Parkland by erecting or maintaining landscaping and improvements without City approval.</p> <p>Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second Amended Complaint], ¶ 20; Exhibit 15, ¶ 20 [City's answer to second amended complaint; Exhibit 16 [1972 letter from Association]; Exhibit 17 [July 18, 2003 letter from City]; Exhibit 18 [August 11, 2003 City memo by Allan</p> | <p>52. Irrelevant; see Evidentiary Objection No. 20 to Harbison Decl. (lack of foundation; no personal knowledge); Evidentiary Objection No. 21 to Harbison Decl. (lack of foundation, lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 52. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as</p> | <p>52. The parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland and that the Luglianis have encroached on it.. (Ex. 12, p. 4 ["...the prior owner installed a series of retaining walls to stabilize the Via Panorama Property. This installation was done without a permit...in City-owned parkland, the Property Owners landscaped and improved Area A, including placing a gazebo and other accessory, non-habitable structures. At the City's direction, Property Owners removed the structures encroaching</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| Rigg]; Exhibit 19 [April 14, 2009 letter from City]; Exhibit 20 [September 19, 2011 letter from City]. | evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4 th 704, 720.) | the City's parkland.".)] This factual recital creates a conclusive presumption in the truth of the fact: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest..." (Evid. Code, § 622). Plaintiffs are entitled to rely on the verified pleadings as judicial admissions. "When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| | | <p>thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>53. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association's 1972 letter stated that the Board of Directors for the Association had determined that "the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed..."</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p> | <p>53. Irrelevant; Disputed as incomplete. Complete quote is:</p> <p>"If the City finds justification for the continued existence or use of the paved driveway, etc., within the parkland please advise the Board so that further consideration may be given the matter." Exhibit 16</p> <p>In addition, the driveway in question was used for Fire and Police Access (Exhibit 17).</p> <p>Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>53. This is a contrived dispute. The omitted language does not warrant denial of the motion.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--------------------------------------|
| <p>54. On July 18, 2003, the City sent the Luglianis a letter requesting that the Luglianis remove encroachments on the “City parklands adjacent to the west side” of the property at 900 Via Panorama.</p> <p>Harbison Decl., ¶ 41; Exhibit 18 [July 18, 2003 letter].</p> | <p>54. Undisputed; Irrelevant; Incorrect citation to evidence – Exhibit 18 is not the letter cited; rather Exhibit 17 is the correct letter.</p> | <p>54. No reply required.</p> |
| <p>55. On April 14, 2009, Allan Rigg, the then-Public Works and Planning Director, wrote to the Luglianis and requested that all “unauthorized encroachments on City Parkland Adjacent to 900 Via</p> | <p>55. Undisputed; Irrelevant.</p> | <p>55. No reply required</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>1 Panorama” be 2 removed. 3 Harbison Decl., ¶ 43; 4 Exhibit 19, [April 14, 2009 5 letter by Allan Rigg]. 6 7</p> | | |
| <p>8 56. On September 19, 9 2011, the City sent 10 the Luglianis a “final 11 notice” requesting 12 that the Luglianis 13 remove “non- 14 permitted 15 encroachments and 16 debris located on the 17 City’s Parkland.” 18 19 Harbison Decl., ¶ 44; 20 Exhibit 20 [September 19, 21 2011].</p> | <p>56. Undisputed; Irrelevant.</p> | <p>56. No reply required</p> |
| <p>22 57. The September 19, 23 2011 “final notice” 24 by the City to the 25 Luglianis requested 26 that the Luglianis 27 remove “any fences, 28</p> | <p>57. Undisputed; Irrelevant</p> | <p>57. No reply required</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>walls, landscape, tree houses, and any other man-made items beyond your property line.”</p> <p>Exhibit 20 [September 19, 2011 letter by City].</p> | | |
| <p>58. The encroachment on the Panorama Parkland includes landscaping, a baroque wrought-iron gate with stone pillars and lion statues, a winding stone driveway, dozens of trees (some of which are as high as 50 feet), a now-overgrown athletic field half the size of a football field, a 21-foot-high retaining wall and</p> | <p>58. Disputed – see Evidentiary Objections No. 21 to Harbison Decl. (lack of foundation; lack of personal knowledge). Exhibit 18 is not properly authenticated and does not contain facts as set forth in Fact 103 (see Evidentiary Objection No. 31); Exhibit 18 does not contain facts as set forth in Fact 58; Irrelevant. Disputed as to characterization</p> | <p>58. The parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland and that the Luglianis have encroached on it.. (Ex. 12, p. 4 [“...the prior owner installed a series of retaining walls to stabilize the Via Panorama Property. This installation was done without a permit...in City-owned parkland, the Property Owners landscaped and</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>other retaining walls. The stone pillars and lion statues are within the City's easements and right of way.</p> <p>Harbison Decl., ¶ 45; Exhibit 18 [August 11, 2003 City memo by Allan Rigg].</p> | <p>of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>improved Area A, including placing a gazebo and other accessory, non-habitable structures. At the City's direction, Property Owners removed the structures encroaching the City's parkland.".]</p> <p>This factual recital creates a conclusive presumption in the truth of the fact: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest..." (Evid. Code, § 622).</p> |
| <p>59. At the April 19, 2012 meeting of the Association's board of directors, the Association</p> | <p>59. Disputed as phrased – Resolution 166 (Exhibit 21) provides the Palos Verdes Homes Association</p> | <p>59. Defendants' re-characterization of this fact does not warrant denial of the motion.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>1 considered and</p> <p>2 approved an</p> <p>3 agreement to convey</p> <p>4 the Panorama</p> <p>5 Parkland to Thomas</p> <p>6 Lieb.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Harbison Decl., ¶ 47;</p> <p>11 Exhibit 21 [Resolution 166,</p> <p>12 Dated April 19, 2012].</p> | <p>board's authorization</p> <p>to execute the "Final</p> <p>Draft Memorandum of</p> <p>Understanding" or</p> <p>"MOU", a global</p> <p>settlement agreement</p> <p>not a mere agreement</p> <p>to convey the Area A</p> <p>to Thomas Lieb.</p> <p>Disputed as to</p> <p>characterization of</p> <p>Area A as "parkland"</p> <p>(see Defendants'</p> <p>Response to Fact 1</p> <p>above).</p> | |
| <p>18 60. On May 8, 2012 , the</p> <p>19 City held a city</p> <p>20 council meeting to</p> <p>21 consider whether to</p> <p>22 convey the Panorama</p> <p>23 Parkland to Thomas</p> <p>24 Lieb.</p> <p>25</p> <p>26 Harbison Decl., ¶ 48.</p> | <p>60. Undisputed; see</p> <p>Evidentiary Objection</p> <p>No. 22 to Harbison</p> <p>Decl. (lack of</p> <p>foundation; lack of</p> <p>personal knowledge).</p> <p>Disputed as to</p> <p>characterization of</p> <p>Area A as "parkland"</p> <p>(see Defendants'</p> | <p>60. No reply required to</p> <p>this "undisputed" fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| | Response to Fact 1 above). | |
| <p>61. The City did not post a sign at the Panorama Parkland to publicize that the proposed conveyance of the Panorama Parkland would be discussed at the May 8, 2012 city council meeting.</p> <p>Harbison Decl., ¶ 49; Exhibit 25, p. 2, li. 23-24 [Special Interrogatories to City]; Exhibit 26, p. 5, li. 25-27 [City's Response to Special Interrogatories].</p> | <p>61. Undisputed; Irrelevant. See Evidentiary Objection No. 23 to Harbison Decl. (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>61. If this fact is undisputed, the evidentiary objections are meaningless and should be overruled. This fact is based on the City's own responses to special interrogatories.</p> |
| <p>62. The City did not perform a mailing of notices to the neighbors adjacent to the Panorama Parkland to publicize</p> | <p>62. Undisputed; Irrelevant. See Evidentiary Objection No. 24 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>62. If this fact is undisputed, the evidentiary objections are meaningless and should be overruled. This fact is based on the City's own responses to</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>1 that the proposed</p> <p>2 conveyance of the</p> <p>3 Panorama Parkland</p> <p>4 would be discussed</p> <p>5 at the May 8, 2012</p> <p>6 city council meeting.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Harbison Decl., ¶ 50;</p> <p>11 Exhibit 25 p. 3, li. 2-3</p> <p>12 [Special Interrogatories to</p> <p>13 City]; Exhibit 26, p. 6, li. 8-9</p> <p>14 [City's Response to Special</p> <p>15 Interrogatories].</p> | <p>Disputed as to</p> <p>characterization of</p> <p>Area A as "parkland"</p> <p>(see Defendants'</p> <p>Response to Fact 1</p> <p>above).</p> | <p>special interrogatories.</p> |
| <p>16 63. The City did not</p> <p>17 publish a notice in</p> <p>18 any local newspapers</p> <p>19 to publicize that the</p> <p>20 proposed</p> <p>21 conveyance of the</p> <p>22 Panorama Parkland</p> <p>23 would be discussed</p> <p>24 at the May 8, 2012</p> <p>25 city council meeting.</p> <p>26 Harbison Decl., ¶ 51;</p> <p>27 Exhibit 25, p. 2, li. 27-28</p> | <p>63. Undisputed; Irrelevant.</p> <p>See Evidentiary</p> <p>Objection No. 25 to</p> <p>Harbison Decl. (lack of</p> <p>foundation; lack of</p> <p>personal knowledge).</p> <p>Disputed as to</p> <p>characterization of</p> <p>Area A as "parkland"</p> <p>(see Defendants'</p> <p>Response to Fact 1</p> <p>above).</p> | <p>63. If this fact is</p> <p>undisputed, the evidentiary</p> <p>objections are meaningless</p> <p>and should be overruled.</p> <p>This fact is based on the</p> <p>City's own responses to</p> <p>special interrogatories.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>[Special Interrogatories to City]; Exhibit 26, p. 6, li. 1-2 [City's Response to Special Interrogatories].</p> | | |
| <p>64. At the May 8, 2012 city council meeting, the City approved the conveyance of the Panorama Parkland.</p> <p>Harbison Decl., ¶ 52; Exhibit 12 [The MOU].</p> | <p>64. Undisputed; cited evidence does not establish Fact 64 (Exhibit 12 does not set forth when the City approved the MOU or the conveyance); see Evidentiary Objection No. 26 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>64. If this fact is undisputed, the evidentiary objections are meaningless and should be overruled. This fact is based on the City’s own responses to special interrogatories.</p> |
| <p>65. By quitclaim deed recorded September</p> | <p>65. Undisputed as to 2012 Quitclaim Deed.</p> | <p>65. No reply required to this “undisputed” fact.</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p> <p>Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p> | <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>66. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p> | <p>66. Undisputed as to 2012 Grant Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>66. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is “parkland.” MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property “is to be used and administered forever for park and/or recreation</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| | | <p>purposes...”</p> <p>Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [“...900 Via Panorama (“Via Panorama Property”) is owned by the Property Owner and located at the end of a cul-du-sc and is adjacent to City-owned parkland on three sides.”].)</p> <p>This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>67. The September 5, 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, Lieb “may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure, ...”</p> <p>Harbison Decl., ¶ 56;</p> | <p>67. Disputed. Exhibit 9 (The 2012 Quitclaim Deed) states: “Upon obtaining any and all required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following...”. The grantee is not Lieb. Exhibit 9, p. 1.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>67. The quoted language does not create a triable issue of fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>1 Exhibit 9, p. 2, ¶ 6</p> <p>2 [September 5, 2012</p> <p>3 Quitclaim Deed].</p> | | |
| <p>6 68. The September 5,</p> <p>7 2012 grant deed</p> <p>8 states in paragraph 2</p> <p>9 that although the</p> <p>10 Panorama Parkland</p> <p>11 is to remain open</p> <p>12 space “it is the intent</p> <p>13 of the parties....that</p> <p>14 [Thomas Lieb] may</p> <p>15 construct any of the</p> <p>16 following: a gazebo,</p> <p>17 sports court,</p> <p>18 retaining wall,</p> <p>19 landscaping,</p> <p>20 barbeque, and/or</p> <p>21 any other</p> <p>22 uninhabitable</p> <p>23 ‘accessory</p> <p>24 structure,’...”</p> <p>25</p> <p>26 Harbison Decl., ¶ 57;</p> <p>27 Exhibit 10, p. 2, ¶ 2</p> | <p>68. Undisputed as to 2012</p> <p>Grant Deed, though</p> <p>quote is incomplete:</p> <p>“it is the intent of the</p> <p>parties, subject to</p> <p>compliance with the</p> <p>requirements for such</p> <p>development of</p> <p>accessory structures</p> <p>of the City and</p> <p>Grantor that [Thomas</p> <p>Lieb] may construct</p> <p>any of the following:</p> <p>a gazebo, sports</p> <p>court, retaining wall,</p> <p>landscaping,</p> <p>barbeque, and/or any</p> <p>other uninhabitable</p> <p>‘accessory structure,’ .</p> <p>. . Grantee shall apply</p> <p>for approval of any</p> <p>such permitted</p> | <p>69. The quoted language</p> <p>does not create a triable</p> <p>issue of fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>1 [September 5, 2012 Grant 2 Deed].</p> | <p>3 structures by the 4 Grantor and the City 5 in accordance with 6 standard procedure 7 and in conformance 8 with applicable 9 covenants, 10 ordinances, and 11 codes.”</p> <p>12 Disputed as to 13 characterization of Area A 14 as “parkland” (see 15 Defendants’ Response to 16 Fact 1 above).</p> | |
| <p>17 69. Lieb is an individual. 18 19 Harbison Decl., ¶¶ 58-59; 20 Exhibit 13, p. 1, li. 4-10 21 [Lugliani and Lieb answer to 22 second amended complaint].</p> | <p>23 69. Disputed as phrased. 24 Thomas Lieb is not an 25 individual, but is the 26 “Trustee, The Via 27 Panorama Trust U/Do 28 May 2, 2012” in this action. Cited evidence does not support Fact Number 69 - page 1 is the caption page of the verified answer.</p> | <p>69. Plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|--|
| | | <p>untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, alleges that Lieb is an individual and all of the defendants admitted the truth of these facts in their verified answer.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>70. Lieb is the trustee of the VIA PANORAMA TRUST U/DO MAY 2, 2012 (“Panorama Trust”). Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1 [Via Panorama Trust Agreement].</p> | <p>70. Undisputed.</p> | <p>70.</p> |
| <p>71. The Panorama Trust is an estate planning instrument for the benefit of the children of Dr. and Mrs. Lugliani. Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p> | <p>71. Undisputed; Irrelevant; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>71. No reply required to this “undisputed” fact.</p> |
| <p>72. The Panorama Trust is not “a body suitably constituted by law to take, hold,</p> | <p>72. Not a Proper Fact; Improper Legal Conclusion; see Evidentiary Objection</p> | <p>72. Defendants have offered no evidence to suggest that the Panorama Trust is a body suitably</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>maintain and regulate public parks...”</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p> | <p>No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>constituted by law to own and regulate parks.</p> |
| <p>73. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rocky & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>73. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>73. Defendants offer no actual evidence to dispute this fact.</p> |
| <p>74. In February 2013, the current owners</p> | <p>74. Irrelevant. Disputed as phrased. See</p> | <p>74. Defendants offer no actual evidence to dispute</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland. Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>this fact.</p> |
| <p>Issue No. 2. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Structures on the Panorama Parkland.</p> | | |
| <p>75. The June 14, 1940 deeds state that as to the transferred real</p> | <p>75. Undisputed.</p> | <p>75.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| <p>property “no buildings, structures or concessions shall be erected, maintained or permitted” on the property “except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”</p> <p>Harbison Decl., ¶ 29; Exhibit 6, p. 9, ¶ 4 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 4 [June 14, 1940 deed for Lot A of Tract 8652].</p> | | |
| <p>76. The prior and current owners of 900 Via Panorama have paid for and constructed</p> | <p>76. Irrelevant; see Evidentiary Objection No. 20 to Harbison Decl.</p> | <p>76. Defendants offer no actual evidence to dispute this fact.</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|--|--|--|
| <p>encroachments on the Panorama Parkland by erecting or maintaining landscaping and improvements without City approval.</p> <p>Harbison Decl., ¶¶ 39-45; Exhibit 1 [Second Amended Complaint], ¶ 20; Exhibit 15, ¶ 20 [City’s answer to second amended complaint; Exhibit 16 [1972 letter from Association]; Exhibit 17 [July 18, 2003 letter from City]; Exhibit 18 [August 11, 2003 City memo by Allan Rigg]; Exhibit 19 [April 14, 2009 letter from City]; Exhibit 20 [September 19, 2011 letter from City].</p> | <p>(lack of foundation; no personal knowledge); Evidentiary Objection No. 21 to Harbison Decl. (lack of foundation, lack of personal knowledge). Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 76. Exhibit 1 is Plaintiffs’ Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence</p> | <p>Plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|--|
| | to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4 th 704, 720.) | answer is a binding admission that cannot be disputed. Here, the second amended complaint, alleges these facts and defendants admitted the truth of these facts in their verified answer. The parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland and that the Luglianis have encroached on it.. (Ex. 12, p. 4 [“...the prior owner installed a series of retaining walls to stabilize the Via Panorama Property. This installation was done without a |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| | | <p>permit...in City-owned parkland, the Property Owners landscaped and improved Area A, including placing a gazebo and other accessory, non-habitable structures. At the City's direction, Property Owners removed the structures encroaching the City's parkland.".)]</p> <p>This factual recital creates a conclusive presumption in the truth of the fact: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest..." (Evid. Code, § 622).</p> |
| 77. By quitclaim deed recorded September 5, | 77. Undisputed as to 2012 Quitclaim Deed. | 77. No reply required to this "undisputed" fact. |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p> <p>Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p> | <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>78. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5, 2012 Grant Deed].</p> | <p>78. Undisputed as to 2012 Grant Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>78. No reply required to this “undisputed” fact.</p> |
| <p>79. The September 5, 2012 quitclaim deed states in paragraph 6 that although the Panorama</p> | <p>79. Disputed. Exhibit 9 (The 2012 Quitclaim Deed) states: “Upon obtaining any and all</p> | <p>79. The quoted language does not create a triable issue of fact sufficient to deny the motion.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>1 2 3 Parkland is to remain 4 open space, should the 5 owner of the Panorama 6 Parkland obtain the 7 necessary permits and 8 approvals from the City, 9 Lieb “may construct any 10 of the following: a 11 gazebo, sports court, 12 retaining wall, 13 landscaping, barbeque, 14 and/or any other 15 uninhabitable ‘accessory 16 structure,’...” 17 Harbison Decl., ¶ 56; 18 Exhibit 9, p. 2, ¶ 6 19 [September 5, 2012 20 Quitclaim Deed].</p> | <p>required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following . . .”. The grantee is not Lieb. Exhibit 9, p. 1. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>21 80. The September 5, 2012 22 grant deed states in 23 paragraph 2 that 24 although the Panorama 25 Parkland is to remain 26 open space “it is the 27 intent of the</p> | <p>80. Undisputed as to 2012 Grant Deed, though quote is incomplete: “it is the intent of the parties, subject to compliance with the</p> | <p>80. The quoted language does not create a triable issue of fact sufficient to deny the motion.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--------------------------------------|
| <p>parties....that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' ...”</p> <p>Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2 [September 5, 2012 Grant Deed].</p> | <p>requirements for such development of accessory structures of the City and Grantor that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure,' . . . Grantee shall apply for approval of any such permitted structures by the Grantor and the City in accordance with standard procedure and in conformance with applicable covenants, ordinances, and codes.”</p> | |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>81. The current owners of the Panorama Parkland intend to use that property for private uses. Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>81. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>81. The references to an open space easement is misleading. In fact, the 2012 deeds state that the open space easement “does not include a right to public access.” Hence, the facts relied on by defendants do not actually create a triable issue of fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>82. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland. Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>82. Irrelevant. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1</p> | <p>82. Defendants offer no evidence other than the plaintiffs’ exhibits 23 and 24. They do not explain how the stated fact is disputed by defendants’ “evidence.”</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>83. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652. The Association's 1972 letter stated that the Board of Directors for the Association had determined that "the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed..."</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p> | <p>above).</p> <p>83. Irrelevant; Dispute as to characterization – letter is undated and quote is incomplete: "If the City finds justification for the continued existence or use of the paved driveway, etc., within the parkland please advise the Board so that further consideration may be given the matter."</p> <p>In addition, the driveway in question was used for Fire and Police Access (Exhibit 17). Disputed as to characterization of</p> | <p>83. Defendants offer no evidence to dispute this fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| | <p>Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>Issue No. 3. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Conveyance or Sale Except to a Body Suitably Constituted by Law to Take, Hold, Maintain and Regulate Public Parks.</p> | | |
| <p>84. In the late 1930’s, the Association faced an overwhelming tax debt and the threat of foreclosure of its parklands.</p> <p>Harbison Decl., ¶ 16; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City’s answer to second amended complaint].</p> | <p>84. Disputed as to characterization of land at issue as “parkland” (see Defendants’ Response to Fact 1 above); see Evidentiary Objection No. 7 to Harbison Decl. (lack of foundation; lack of personal knowledge). Objection to Exhibit 1 (SAC) to establish Fact 84.</p> | <p>84. If the fact is undisputed, the objections are meaningless. That said, plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| | <p>Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>85. To avoid this result, the Association deeded its</p> | <p>85. Undisputed as to fact; see Evidentiary</p> | <p>85. If the fact is undisputed, the objections</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>parklands to the City and to the District between 1938 and 1940.</p> <p>Harbison Decl., ¶ 17; Exhibit 1 [Second Amended Complaint], ¶ 12; Exhibit 13, p. 2, li. 16-19 [Lugliani and Lieb answer to second amended complaint]; Exhibit 15, ¶ 12 [City's answer to second amended complaint].</p> | <p>Objection No. 8 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> <p>Disputed as to characterization of land at issue as “parkland” (see Defendants’ Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 85. Exhibit 1 is Plaintiffs’ Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v. Superior Court</i></p> | <p>are meaningless. That said, plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| | <p>(<i>Crowell</i>) (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>86. The Association has no current ownership of parklands.</p> <p>Harbison Decl., ¶ 18.</p> | <p>86. Disputed as to characterization of land in question as parkland (see Defendants' Response to Fact 1 above); see Evidentiary Objection No. 9 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>86. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is "parkland." MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|--|--|
| | Dispute as Irrelevant - Plaintiff admits that the Association is a body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).) | park and/or recreation purposes...” Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland. (Ex. 12, p. 4 [“...900 Via Panorama (“Via Panorama Property”) is owned by the Property Owner and located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides.”].) This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622). |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>87. Instead, the City has taken on both the ownership of and stewardship of the parks. Harbison Decl., ¶ 19.</p> | <p>87. Undisputed; see Evidentiary Objection No. 10 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>87. If this fact is undisputed the objection has no merit and should be overruled.</p> |
| <p>88. The City has established a Parklands Commission. Harbison Decl., ¶ 20.</p> | <p>88. Disputed as phrased. The City has established a Parklands Committee, which is an advisory body to the City Council. Repp Decl., ¶ 5.</p> | <p>88. This is a contrived “dispute.” The stated fact is true.</p> |
| <p>89. Applications by residents that would impact parklands are brought to the City’s Parkland Commission and not the Association. Harbison Decl., ¶ 21.</p> | <p>89. Disputed. Only applications for some types of permits (i.e., only those that require City Council approval) may be considered by the Parklands Committee for the Committee’s non-binding</p> | <p>89. This is a contrived “dispute.” The stated fact is true.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|--|
| | <p>recommendation to the City Council.</p> <p>Repp Decl., ¶ 5. See Evidentiary Objection No. 11 to Harbison Decl.</p> | |
| <p>90. Permits and enforcement actions concerning parklands involve the City and not the Association.</p> <p>Harbison Decl., ¶ 22.</p> | <p>90. Disputed as incomplete. The City's permitting authority is limited to issuing permits under the PVEMC. Likewise, the City only enforces violations of the PVEMC. The City does not enforce private deed restrictions.</p> <p>Repp Decl., ¶ 6. See Evidentiary Objection No. 22 to Harbison Decl.</p> | <p>90. This is a contrived "dispute." The stated fact is true.</p> |
| <p>91. The Association is no longer a body that takes, holds, maintains and regulates public parks</p> | <p>91. Disputed; Irrelevant. Plaintiff admits that the Association is a</p> | <p>91. This is a contrived "dispute." There is no evidence that at anytime after 1940, the Association</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>and has not done so since 1940.</p> <p>Harbison Decl., ¶ 23.</p> | <p>body that can hold parks within the meaning of the deeds. (Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6).) Regardless as to whether the 1940s Deeds apply, the 1940 Deeds do not require the Association to currently take, hold, maintain and regulate parks – only to have the legal ability to do so. SAC, pg. 7, para. 14.i.-ii. [“it shall be the duty of [the Association] maintain the parks...”]; Harbison Decl., ¶ 30; Exhibit</p> | <p>holds or maintains public parks.</p> <p>Defendants own witness, attorney Sid Croft, declared that in the 1940, the Association “deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property.” (Croft. Decl., ¶ 20).</p> <p>The cited deposition of Harbison does not create a dispute. He did not testify that the Association currently owns property.</p> <p>Harbison testified that the Association is not a body that takes, holds and regulates parks. (Harbison Depo, p. 45, li. 6-9) He</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | <p>6, p. 9, ¶ 5 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652] [The June 14, 1940 deeds state that the transferred property “shall not be sold or conveyed, in whole or in part...<u>except to a body suitably constituted by law to take, hold, maintain and regulate public parks</u>”</p> | <p>also testified that at one time the Association was a body that maintained parks, and could do so again but the Association no longer does so. (Harbison Depo., p. 45, li. 6-9) Harbison testified that it ‘s “unlikely” that the Association would ever hold parkland again. (Harbison Depo., p. 46, li. 3-7).</p> |
| <p>92. On June 14, 1940, the Association conveyed a number of parks to the City in multiple grant deeds.</p> | <p>92. Undisputed. Objection to Exhibit 1 (SAC) to establish Fact 92. Exhibit 1 is Plaintiffs’ Second</p> | <p>92. If this fact is undisputed, the evidentiary objection is meaningless and should be withdrawn. Plaintiffs are entitled to rely on verified pleadings</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>1 Harbison Decl., ¶ 24;</p> <p>2 Exhibit 1 [Second Amended</p> <p>3 Complaint], ¶ 12; Exhibit 6,</p> <p>4 p. 3, Item 5 [June 14, 1940</p> <p>5 deed for Lot A of Tract</p> <p>6 7540]; Exhibit 7, p. 2, Item</p> <p>7 7 (b), [June 14, 1940 deed</p> <p>8 for Lot A of Tract 8652];</p> <p>9 Exhibit 13, p. 2, li. 16-19</p> <p>10 [Lugliani and Lieb answer to</p> <p>11 second amended complaint];</p> <p>12 Exhibit 15, ¶ 12 [City's</p> <p>13 answer to second amended</p> <p>14 complaint].</p> | <p>Amended</p> <p>Complaint.</p> <p>Plaintiffs cannot</p> <p>rely upon their own</p> <p>pleading as evidence</p> <p>to support their</p> <p>motion. (See <i>College</i></p> <p><i>Hospital, Inc. v.</i></p> <p><i>Superior Court</i></p> <p><i>(Crowell)</i> (1994) 8</p> <p>Cal. App. 4th 704,</p> <p>720.)</p> | <p>and the defendants</p> <p>responses to those</p> <p>pleadings.</p> |
| <p>17 93. The June 14, 1940 deeds</p> <p>18 state that the transferred</p> <p>19 property “shall not be</p> <p>20 sold or conveyed, in</p> <p>21 whole or in part...except</p> <p>22 to a body suitably</p> <p>23 constituted by law to</p> <p>24 take, hold, maintain and</p> <p>25 regulate public parks...”</p> <p>26 Harbison Decl., ¶ 30;</p> <p>27 Exhibit 6, p. 9, ¶ 5 [June 14,</p> | <p>93. Disputed as</p> <p>incomplete quote:</p> <p>“except to a body</p> <p>suitably constituted</p> <p>by law to take, hold,</p> <p>maintain and regulate</p> <p>public parks;</p> <p>provided, that</p> <p>portions of said realty</p> <p>may be dedicated to</p> <p>the public for</p> | <p>93. The omitted language</p> <p>does not warrant denial of</p> <p>the motion</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| <p>1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 5 [June 14, 1940 deed for Lot A of Tract 8652].</p> | <p>parkway and/or street purposes.”</p> | |
| <p>94. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association.</p> <p>Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p> | <p>94. Undisputed as to 2012 Quitclaim Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>94. No response required to this “undisputed fact.”</p> |
| <p>95. By grant deed recorded September 5, 2012, Instrument Number 20121327415, the Association conveyed the Panorama Parkland to Thomas Lieb.</p> <p>Harbison Decl., ¶ 55; Exhibit 10 [September 5,</p> | <p>95. Undisputed as to 2012 Grant Deed. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>95. No response required to this “undisputed fact.”</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| 2012 Grant Deed]. | | |
| <p>96. Lieb is an individual.</p> <p>Harbison Decl., ¶¶ 58-59; Exhibit 13, p. 1, li. 4-10 [Lugliani and Lieb answer to second amended complaint].</p> | <p>96. Disputed as phrased. Thomas Lieb is not an individual, but is the “Trustee, The Via Panorama Trust U/Do May 2, 2012” in this action. Cited evidence does not support Fact 69 – Exhibit 13, page 1 is the caption page of the Verified Answer.</p> | <p>96. Plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| | | <p>defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, alleges that Lieb is an individual and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| <p>97. Lieb is the trustee of the VIA PANORAMA TRUST U/DO MAY 2, 2012 (“Panorama Trust”).</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1 [Via Panorama Trust Agreement].</p> | <p>97. Undisputed.</p> | <p>97. No response required to this “undisputed” fact.</p> |
| <p>98. The Panorama Trust is an estate planning instrument for the</p> | <p>98. Undisputed; Irrelevant; see Evidentiary</p> | <p>98. No response required to this “undisputed” fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>benefit of the children of Dr. and Mrs. Lugliani.</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p> | <p>Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | |
| <p>99. The Panorama Trust is not “a body suitably constituted by law to take, hold, maintain and regulate public parks...”</p> <p>Harbison Decl., ¶ 58; Exhibit 22, p. 1, ¶ 1.1, p. 7, ¶ 1.11 [Via Panorama Trust Agreement].</p> | <p>99. Not a Proper Fact; Improper Legal Conclusion; see Evidentiary Objection No. 28 to Harbison Decl. (lack of foundation; lack of personal knowledge).</p> | <p>99. Defendants have offered no evidence to suggest that the Panorama Trust is a body suitably constituted by law to own and regulate parks</p> |
| <p>100. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March</p> | <p>100. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23</p> | <p>100. Defendants offer no actual evidence to dispute this fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>and 24, the property remains subject to an open space easement. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>101. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland. Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2</p> | <p>101. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU, and as required by the</p> | <p>101. Defendants offer no actual evidence to dispute this fact.</p> |

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>[February 19, 2013 City Staff Report to Planning Commission].</p> | <p>PVEMC. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>Issue No. 4. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Purport to Authorize Landscaping and Construction in Violation of the June 14, 1940 Deed Restrictions that Bar Improvements that Interfere with the Use and Maintenance of the Parkland for Park and Recreation Purposes.</p> | | |
| <p>102. 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. Such</p> | <p>102. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: “That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty to construct and/or maintain paths, steps and/or other landscape improvements, as a means of egress from</p> | <p>102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not create any triable issues of fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>1 2 3 improvements must not 4 impair or interfere with 5 the use and maintenance 6 of said realty for park 7 and/or recreation 8 purposes. 9 10 Harbison Decl., ¶ 31; 11 Exhibit 6, p. 9, ¶ 6 [June 14, 12 1940 deed for Lot A of 13 Tract 7540]; Exhibit 7, p. 5, 14 ¶ 6 [June 14, 1940 deed for 15 Lot A of Tract 8652]. 16 17 18 19 20 21 22 23 24</p> | <p>and ingress to said lot or for the improvement of views under such rules and regulations as will not, in the opinion of said municipality or other body and of Palos Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreational purposes, as herein-before set forth.” Exhibit 6, p. 9, ¶ 6 [June 14, 1940 Deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 6 [June 14, 1940 Deed for Lot A of Tract 8652]. See Evidentiary Objection No. 15 to Harbison Declaration (lack of foundation; lack of personal knowledge). Disputed as to characterization of Area A as “parkland”.</p> | |
| <p>25 26 103. The encroachment 27 on the Panorama 28 Parkland includes</p> | <p>103. Disputed – see Evidentiary Objections No. 21 to Harbison Decl. (lack</p> | <p>103. Defendants offer no evidence to dispute this fact. Moreover, the parties</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|---|
| <p>landscaping, a baroque wrought-iron gate with stone pillars and lion statues, a winding stone driveway, dozens of trees (some of which are as high as 50 feet), a now-overgrown athletic field half the size of a football field, a 21-foot-high retaining wall and other retaining walls. The stone pillars and lion statues are within the City's easements and right of way.</p> <p>Harbison Decl., ¶ 45; Exhibit 18 [August 11, 2003 City memo by Allan Rigg].</p> | <p>of foundation; lack of personal knowledge). Exhibit 18 is not properly authenticated and does not contain facts as set forth in Fact 103 (see Evidentiary Objection No. 31); Irrelevant. Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>to the MOU, which is a contract, included a factual recital that the referenced property is City owned parkland and that the Luglianis have encroached on it.. (Ex. 12, p. 4 ["...the prior owner installed a series of retaining walls to stabilize the Via Panorama Property. This installation was done without a permit...in City-owned parkland, the Property Owners landscaped and improved Area A, including placing a gazebo and other accessory, non-habitable structures. At the City's direction, Property Owners removed the structures encroaching the City's parkland."].)</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| | | <p>This factual recital creates a conclusive presumption in the truth of the fact: “The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest...” (Evid. Code, § 622).</p> <p>Plaintiffs are entitled to rely on the verified pleadings as judicial admissions.</p> <p>“When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| | | <p>error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |
| 104. The September 5, 2012 quitclaim deed | 104. Disputed. Exhibit 9 (The 2012 Quitclaim | 104. The quoted language does not actually conflict |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>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, Lieb “may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’...” Harbison Decl., ¶ 56; Exhibit 9, p. 2, ¶ 6 [September 5, 2012 Quitclaim Deed].</p> | <p>Deed) states: “Upon obtaining any and all required permits and approvals from the Grantor, Grantee (Palos Verdes Homes Association) may construct any of the following . . .”. The grantee is not Lieb. Exhibit 9, p. 1.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>with this fact.</p> |
| <p>105. The September 5, 2012 grant deed states in paragraph 2 that although the Panorama Parkland is to remain</p> | <p>105. Undisputed as to 2012 Grant Deed, though quote is incomplete: “it is the intent of the</p> | <p>105. The omitted language does not create a triable issue of fact.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--------------------------------------|
| <p>open space “it is the intent of the parties....that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ ...”</p> <p>Harbison Decl., ¶ 57; Exhibit 10, p. 2, ¶ 2 [September 5, 2012 Grant Deed].</p> | <p>parties, subject to compliance with the requirements for such development of accessory structures of the City and Grantor that [Thomas Lieb] may construct any of the following: a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable ‘accessory structure,’ . . . Grantee shall apply for approval of any such permitted structures by the Grantor and the City in accordance with standard procedure and in conformance with applicable covenants,</p> | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| | <p>ordinances, and codes.”</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | |
| <p>106. The current owners of the Panorama Parkland intend to use that property for private uses.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>106. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, the property remains subject to an open space easement.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>106. Defendants offer no actual evidence to dispute this fact.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>107. In February 2013, the current owners of the Panorama Parkland applied to the City for a zone change to change the zoning from Open Space to R-1 and to obtain “after the fact” approval for various accessory structures on the Panorama Parkland.</p> <p>Harbison Decl., ¶¶ 59-60; Exhibit 24, pp. 2-3 [March 7, 2013 Rockey & Wahl letter]; Exhibit 23, pp. 1-2 [February 19, 2013 City Staff Report to Planning Commission].</p> | <p>107. Disputed as phrased. See Evidentiary Objection Nos. 29-30 to Harbison Decl. (lack of foundation; lack of personal knowledge). As set forth in Exhibits 23 and 24, an application was submitted to the City to allow for a Zone Change in keeping with the approved and executed MOU.</p> <p>Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>107. Defendants offer no actual evidence to dispute this fact.</p> |
| <p>108. In late 1972, the Association wrote to the City about the parkland on Lot A, Tract 8652.</p> | <p>108. Irrelevant; dispute as to characterization – letter is undated and quote is incomplete:</p> | <p>108. Defendants offer no actual evidence to dispute this fact. The quoted language supports the fact</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>The Association's 1972 letter stated that the Board of Directors for the Association had determined that "the use of parkland for the benefit of a single private residence is not consistent with the intent of the deed restrictions and such use should be disallowed..."</p> <p>Harbison Decl., ¶ 40; Exhibit 16, [1972 letter by Patricia Gribben of Association to City].</p> | <p>"If the City finds justification for the continued existence or use of the paved driveway, etc., within the parkland please advise the Board so that further consideration may be given the matter."</p> <p>In addition, the driveway in question was used for Fire and Police Access.</p> <p>(Exhibit 17)</p> <p>Disputed as to characterization of Area A as "parkland" (see Defendants' Response to Fact 1 above).</p> | <p>as phrased.</p> |
| <p>Issue No. 5. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action Because there are no Triable Issues of Material Fact that the June 14, 1940 Deeds Created a Public Trust and that the City Violated that Trust by Executing the September 2012 Deeds.</p> | | |
| <p>109. The properties conveyed by the Association to the City on June 14, 1940</p> | <p>109. Disputed as to characterization of Area A as "parkland" (see Defendants'</p> | <p>109. The stated fact is supported by the defendants' own witness, attorney Sid Croft, who</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--|
| <p>1 included the Panorama 2 Parkland. 3 4 5 6 Harbison Decl., ¶ 24; 7 Exhibit 1 [Second Amended 8 Complaint], ¶ 12; Exhibit 6, 9 p. 3, Item 5 [June 14, 1940 10 deed for Lot A of Tract 11 7540]; Exhibit 7, p. 2, Item 12 7 (b), [June 14, 1940 deed 13 for Lot A of Tract 8652]; 14 Exhibit 13, p. 2, li. 16-19 15 [Lugliani and Lieb answer to 16 second amended complaint]; 17 Exhibit 15, ¶ 12 [City's 18 answer to second amended 19 complaint]. 20 21 22 23 24 25 26 27 28</p> | <p>Response to Fact 1 above). Objection to Exhibit 1 (SAC) to establish Fact 109. Exhibit 1 is Plaintiffs' Second Amended Complaint. Plaintiffs cannot rely upon their own pleading as evidence to support their motion. (See <i>College Hospital, Inc. v.</i> <i>Superior Court (Crowell)</i> (1994) 8 Cal. App. 4th 704, 720.)</p> | <p>declares that in 1940 “the Association deeded all lands under its control the new City....The transfer of the properties to the City was accomplished with two (2) deeds from the Association, dated June 1940 (“1940 Deeds”), which are exhibits 6 and 7 to Plaintiffs’ Evidence. Those deeds include Lot A of Tracts 8652 and 7540. (Croft Decl., ¶ 20). Plaintiffs are entitled to rely on the verified pleadings as judicial admissions. “When allegations in a complaint are admitted by the answer (a) no evidence need be offered in their support; (b) evidence is not admissible to prove their</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS'</u> <u>UNDISPUTED</u> <u>MATERIAL FACTS</u> <u>AND EVIDENCE</u> | <u>DEFENDANTS'</u> <u>RESPONSE AND</u> <u>SUPPORTING</u> <u>EVIDENCE</u> | <u>PLAINTIFFS'</u> <u>EVIDENCE IN REPLY</u> |
|---|---|---|
| | | <p>untruth; (c) no finding thereon is necessary; (d) a finding contrary thereto is error.” (<i>Valerio v. Andrew Youngquist Construction</i> (2002) 103 Cal.App.4th 1264, 1271)</p> <p>The references to the second amended complaint are for convenience only and the corresponding judicial admission by defendants in their verified answer is a binding admission that cannot be disputed.</p> <p>Here, the second amended complaint, allege these facts in a verified pleading and all of the defendants admitted the truth of these facts in their verified answer.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <p>110. By quitclaim deed recorded September 5, 2012, Instrument Number 20121327414, the Panorama Parkland was conveyed from the City to the Association. Harbison Decl., ¶ 54; Exhibit 9 [September 5, 2012 Quitclaim Deed].</p> | <p>110. Undisputed as to 2012 Quitclaim. Disputed as to characterization of Area A as “parkland” (see Defendants’ Response to Fact 1 above).</p> | <p>110. No response required to this “undisputed” fact.</p> |
| <p>111. The City passed Resolution No. 12 formally accepting the deeds and confirming the land use restrictions. Harbison Decl., ¶ 38, Exhibit 8 [Resolution No. 12].</p> | <p>111. Undisputed</p> | <p>111.</p> |
| <p>Issue No. 6. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action based on the Doctrine of Collateral Estoppel Because of the Prior Litigation Concerning these Deed Restrictions.</p> | | |
| <p>112. In 1949, the City litigated substantially identical deed</p> | <p>112. Disputed. This is a legal conclusion, not a fact.</p> | <p>112. Defendants have offered no facts in opposition.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|---|
| <p>restrictions in <i>Roberts v. City of Palos Verdes Estates</i> (1949) 93 Cal.App.2d 545 (“<i>Roberts.</i>”)</p> <p><i>Roberts v. City of Palos Verdes Estates</i> (1949) 93 Cal.App.2d 545.</p> | | |
| <p>113. The deed restriction at issue in <i>Roberts</i> was:</p> <p>“that except as provided above, no buildings, structures or concessions shall be erected, maintained or permitted upon the said realty, except such as, (in the opinion of the Park Department of Palos Verdes Homes Association), are properly incidental to the convenient and/or proper use of said realty for park purposes.”</p> | <p>113. Irrelevant.</p> | <p>113. Defendants have offered no facts in opposition.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|---|
| <i>(Roberts, at 546).</i> | | |
| <p>114. In the <i>Roberts</i> case, the City argued that it could substitute its “best judgment” for the use of the park for the express terms of the deed.</p> <p><i>(Roberts, at 546-47).</i></p> | <p>114. Irrelevant. This is a legal conclusion, not a fact.</p> | <p>114. Defendants have offered no facts in opposition.</p> |
| <p>Issue No. 7. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Standing Because there is no Triable Issue of Fact Regarding CEPC and Harbison’s Right to Assert Claims.</p> | | |
| <p>115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter.</p> <p>Exhibit 13 [Lieb and Lugliani answer to second amended complaint].</p> | <p>115. Undisputed</p> | <p>115.</p> |
| <p>116. The Association has asserted as its second</p> | <p>116. Undisputed</p> | <p>116.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>1 affirmative defense that</p> <p>2 Plaintiffs have no</p> <p>3 standing in this matter.</p> <p>4 Exhibit 14 [Association's</p> <p>5 answer to second amended</p> <p>6 complaint].</p> | | |
| <p>7 117. The City has asserted</p> <p>8 as its eighth affirmative</p> <p>9 defense that Plaintiffs</p> <p>10 have no standing in this</p> <p>11 matter.</p> <p>12 Exhibit 15 [City's answer to</p> <p>13 second amended complaint].</p> | <p>14 117. Undisputed</p> | <p>15 117.</p> |
| <p>16 118. Plaintiff John</p> <p>17 Harbison ("Harbison")</p> <p>18 owns property located</p> <p>19 within the City.</p> <p>20 Harbison Decl., ¶ 2;</p> <p>21 Harbison Decl., ¶ 2; Exhibit</p> <p>22 14, ¶ 9 [Association's</p> <p>23 Answer to Complaint];</p> <p>24 Exhibit 15, ¶ 9 [City's</p> <p>25 Answer to Second</p> <p>26 Amended Complaint].</p> | <p>27 118. Undisputed</p> | <p>28 118.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--------------------------------------|
| <p>119. Harbison has owned property located within the City since 1992.</p> <p>Harbison Decl., ¶ 2.</p> | <p>119. Undisputed</p> | <p>119.</p> |
| <p>120. Harbison owns property that is subject to the Association's jurisdiction.</p> <p>Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second Amended Complaint].</p> | <p>120. Undisputed</p> | <p>120.</p> |
| <p>121. Harbison is a member of the Association.</p> <p>Harbison Decl., ¶ 2; Exhibit 14, ¶ 9 [Association's Answer to Complaint]; Exhibit 15, ¶ 9 [City's Answer to Second</p> | <p>121. Undisputed</p> | <p>121.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|---|--|
| Amended Complaint]. | | |
| <p>122. Harbison is a member of plaintiff Citizens for Enforcement of Parkland Covenants.</p> <p>Harbison Decl., ¶ 1.</p> | <p>122. Undisputed</p> | <p>122.</p> |
| <p>123. Harbison has paid property taxes annually since purchasing his property in 1992.</p> <p>Harbison Decl., ¶ 2.</p> | <p>123. Undisputed</p> | <p>123.</p> |
| <p>124. The Association's bylaws state that its members shall be constituted of "all who hold legal title of record" to any lot located within Palos Verdes Estates. (By-Laws, 24 Art. I, § 1(c).) "Such building title shall be the sole qualification for</p> | <p>124. Disputed as phrased.</p> <p>Complete quote states: "The members of this corporation shall be all who hold legal title of record to any such building site or who, while holding a contract for the purchase of any such building site from the Commonwealth Trust Company, shall reside upon the building site described in such contract. Such holding of legal title or such residence shall be the sole</p> | <p>124. The omitted language does not alter the fact asserted.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>membership in the [Association].” Exhibit 5, p. 30, Art I, § 1(c).</p> | <p>qualification for membership in the corporation. Contract holders shall establish their right to membership to the satisfaction of the Secretary of this corporation.” Exhibit 5, p. 30, Art I, § 1(c).</p> | |
| <p>Issue No. 8. The Court Should Grant Summary Adjudication as to the Affirmative Defense of Non-Joinder Because there is no Triable Issue of Fact Regarding the District’s Participation in this Action.</p> | | |
| <p>125. The Association has asserted as its seventh affirmative defense that there is an indispensable party missing from this action. Exhibit 14 [Association’s Answer to Second Amended Complaint].</p> | <p>125. Undisputed</p> | <p>125.</p> |
| <p>126. The City has asserted as its thirteenth affirmative defense that there is an indispensable party missing from this action. Exhibit 15 [City’s Answer to</p> | <p>126. Undisputed</p> | <p>126.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| Second Amended Complaint]. | | |
| 127. On April 11, 2014, the Court issued a minute order containing a tentative ruling on defendants' demurrers and motions to strike. Lewis Decl., ¶ 7; Exhibit 27 [April 11, 2014 minute order]. | 127. Undisputed | 127. |
| 128. On May 21, 2014 the Court confirmed that the April 11, 2014 tentative ruling would be the final ruling of the Court. Lewis Decl., ¶ 7; Exhibit 28 [May 21, 2014 Reporter's Transcript]. | 128. Undisputed | 128. |
| 129. The April 11, 2014 order included the | 129. Not a proper fact; Incorrect citation to | 129. The court's ruling appears at Exhibit 27 |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| <p>1 following ruling by the 2 Court: “The matters 3 now before this court do 4 not depend, in this 5 Court’s view, on the 6 MOU and who were or 7 were not parties to it.” 8 9 Exhibit 28, p. 9, li. 13-14 10 [May 21, 2014 Reporter’s 11 Transcript].</p> | <p>evidence – Exhibit 28 does not contain the quote or the April 11, 2014 order.</p> | <p>(mistakenly identified as Exhibit 28) at page 12 of the exhibit (9 of the order). Defendants offer no contrary evidence.</p> |
| <p>14 130. The April 11, 2014 15 order included the 16 following ruling by the 17 Court: “The parties to 18 the MOU made a deal 19 and took the risk that 20 what they were doing 21 would not be challenged 22 or, if challenged, the 23 challenge would not be 24 successful. That 25 challenge is what they 26 are now facing, but the 27 MOU, in this court’s</p> | <p>130. Not a proper fact; Incorrect citation to evidence – Exhibit 28 does not contain the quote or the April 11, 2014 order.</p> | <p>130. The court’s ruling appears at Exhibit 27 (mistakenly identified as Exhibit 28) at page 12 of the exhibit (9 of the order). Defendants offer no contrary evidence.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|---|--------------------------------------|
| <p>view, does not need to be vacated or set aside for the restrictions allegedly tied to [the Panorama Parkland] to be enforced if they have been or are being violated. The private agreement of parties to the MOU does not bind others with an interest or preclude a court from acting...”</p> <p>Exhibit 28, p. 8, li. 28 – p. 9, li. 5 [May 21, 2014 Reporter’s Transcript].</p> | | |
| <p>131. On May 1, 2014, the plaintiffs requested dismissal, without prejudice, of the Palos Verdes Peninsula Unified School District (“District.”)</p> <p>Lewis Decl., ¶ 8; Exhibit 29</p> | <p>131. Undisputed.</p> | <p>131.</p> |

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|---|--|--|
| [Notice of Entry of Dismissal]. | | |
| 132. On May 5, 2014, the clerk entered the dismissal of the District. Lewis Decl., ¶ 8, Exhibit 29 [Notice of Entry of Dismissal] | 132. Undisputed. | 132. |
| 133. On May 7, 2014, plaintiffs served notice of the dismissal of the District. Lewis Decl., ¶ 8; Exhibit 29 [Notice of Entry of Dismissal]. | 133. Undisputed. | 133. |
| 134. On October 31, 2014, plaintiffs' stipulated to leave to file a cross-complaint against the District. Lewis Decl., ¶ 9; Exhibit 30 [October 31, 2014 letter by Lewis to Dveirin]. | 134. Undisputed, Irrelevant. | 134. No response required to this "undisputed" fact. |
| 135. No defendant has | 135. Undisputed, | 135. No response required |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE</u> | <u>DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE</u> | <u>PLAINTIFFS' EVIDENCE IN REPLY</u> |
|--|--|---|
| <p>filed a cross-complaint in this matter.</p> <p>Lewis Decl., ¶ 9.</p> | <p>Irrelevant.</p> | <p>to this “undisputed” fact.</p> |
| <p>136. No defendant took any action in response to the request for entry of dismissal.</p> <p>Lewis Decl., ¶ 9.</p> | <p>136. Undisputed, Irrelevant.</p> | <p>136. No response required to this “undisputed” fact.</p> |
| <p>137. No defendant has accepted plaintiffs’ stipulation for leave to file a cross-complaint against the District.</p> <p>Lewis Decl., ¶ 9.</p> | <p>137. Undisputed, Irrelevant.</p> | <p>137. No response required to this “undisputed” fact.</p> |

DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE

| <u>DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE</u> | <u>PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE</u> |
|--|---|
| <p>1. At least 10 members of the Citizens for Enforcement of Parkland and Covenants are not residents of Palos Verdes Estates.</p> <p>Dveirin Decl., Exhibit A (Plaintiffs' Responses to Special Interrogatories, Set One Propounded by Defendant Palos Verdes Homes Association, Response to Special Interrogatory No. 1 [pg. 2, lns. 17-18]).)</p> | <p>1. Undisputed.</p> |
| <p>2. Area A (as legally described in Plaintiffs' Evidence, Exhibit 3) is part of Business and Public Use Districts Class F under Declaration No. 1.</p> <p>Croft Decl. ¶ 11; Exhibit A to Croft Decl. [Declaration No. 1].</p> | <p>2. Undisputed but irrelevant because the later in time 1940s deeds declared that the property was to be used as parkland forever.</p> <p>Harbison Decl., ¶ 28; Exhibit 6, p. 7 [June 14, 1940 deed for Lot A of Tract 7540]; Exhibit 7, p. 4 [June 14, 1940 deed for Lot A of Tract 8652].</p> |
| <p>3. Plaintiff Harbison did not did not file a recall petition or take any other administrative action to contest or challenge the Association's decision to enter into the MOU.</p> | <p>3. Undisputed but irrelevant. Harbison was not required to file a recall petition as a prerequisite to suit.</p> |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE</u> | <u>PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE</u> |
|---|---|
| Dveirin Decl., Exhibit B (Harbison Depo., pgs. 137, ln. 8-138, ln. 16.) | |
| 4. The Association is a body duly constituted to take and hold parkland within the meaning of the 1940 deeds. Dveirin Decl., Exhibit B (Harbison Depo., pg. 45, lns. 19-25; 46:1-6.) | Defendants own witness, attorney Sid Croft, declared that in the 1940, the Association “deeded all lands under its control to the new City, and the City thereafter took over the maintenance obligation of the property.” (Croft. Decl., ¶ 20). Harbison did not testify that the Association currently owns parkland property. Harbison testified that the Association is not a body that takes, holds and regulates parks. (Harbison Depo, p. 45, li. 6-9) He also testified that at one time the Association was a body that maintained parks, and could do so again but the Association no longer does so. (Harbison Depo, p. 45, li. 6- 9) Harbison testified that it ‘s “unlikely” that the Association would ever hold parkland again. (Harbison Depo., p. 46, li. 3-7). |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: May 22, 2015

BROEDLOW LEWIS LLP

By:  _____
Jeffrey Lewis

Attorneys for Plaintiffs
CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON