

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 12

HON. BARBARA A. MEIERS, JUDGE

4
5 CITIZENS FOR ENFORCEMENT OF)
6 PARKLAND COVENANTS AND JOHN)
HARBISON,)

7 PLAINTIFFS,)

8 VS.)

CASE NO. BS142768

9 CITY OF PALOS VERDES ESTATES, A)
10 MUNICIPAL CORPORATION; PALOS)
VERDES HOMES ASSOCIATION, A)
11 CALIFORNIA CORPORATION; ROBERT)
LUGLIANI AND DELORES A. LUGLIANI,)
12 AS CO-TRUSTEES OF THE LUGLIANI)
TRUST; THOMAS J. LIEB, TRUSTEE,)
13 THE VIA PANORAMA TRUST U/DO MAY 2,)
2012 AND DOES 1 THROUGH 20,)

14 DEFENDANTS.)
15

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 SEPTEMBER 9, 2015

18 APPEARANCES:

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28 PRO TEMPORE OFFICIAL REPORTER

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I N D E X

SEPTEMBER 9, 2015

CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES

(NONE OFFERED)

E X H I B I T S

(NONE OFFERED)

1 CASE NUMBER: BS142768
2 CASE NAME: CITIZENS FOR ENFORCEMENT V.
3 CITY OF PALOS VERDES
4 LOS ANGELES, CALIFORNIA WEDNESDAY, SEPTEMBER 9, 2015
5 DEPARTMENT 12 HON. BARBARA A. MEIERS, JUDGE
6 REPORTER: CINDY DUYNSTEE, CSR 12938
7 TIME: 9:58 P.M.
8

9 ***

10 THE COURT: CITIZENS OF ENFORCEMENT OF PARKLAND
11 COVENANTS VERSUS CITY OF PALOS VERDES, ET CETERA.

12 MR. LEWIS: GOOD MORNING, YOUR HONOR. JEFFREY
13 LEWIS FOR PLAINTIFFS.

14 MR. DVEIRIN: GOOD MORNING, YOUR HONOR. LEWIS
15 BRISBOIS BISGAARD & SMITH, BRANT DVEIRIN ON BEHALF OF
16 DEFENDANT PALOS VERDES HOMES ASSOCIATION.

17 THE COURT: OKAY.

18 MS. HOGIN: GOOD MORNING, YOUR HONOR. CHRISTI
19 HOGIN FOR THE CITY OF PALOS VERDES ESTATE.

20 MR. MAMALAKIS: GOOD MORNING, YOUR HONOR.
21 DAVID MAMALAKIS ON BEHALF OF DEFENDANTS LUGLIANI AND THE
22 VIA PANORAMA TRUST.

23 THE COURT: YOU KNOW WHAT I THINK I SHOULD DO,
24 I DID SOME SCRIBBLING ON YOUR PROSED JUDGMENT. LET ME
25 ASK MR. AVINA TO MAKE A COPY OF THIS SO YOU CAN ALL TAKE
26 A LOOK AT IT, INSTEAD OF ME JUST VERBALLY THROWING
27 THINGS AT YOU, TO SEE IF YOU HAVE SOME THOUGHTS -- IF
28 YOU CAN READ MY HANDWRITING -- WHAT I WAS THINKING.

1 ABOUT, BUT WE CAN CALL IT AREA A, TOO.

2 THE COURT: WELL, IF ANYBODY LOOKS BACK TO THE
3 PLEADINGS THAT WERE FILED IN THE CASE, YOU DON'T HAVE A
4 CONNECTION BETWEEN THE JUDGMENT AND THE PLEADINGS, AS I
5 RECALL.

6 MR. DVEIRIN: BUT --

7 MR. MAMALAKIS: LIKE EXHIBIT 2 DOES IDENTIFY
8 THE PROPERTIES AS AREA A.

9 MR. DVEIRIN: ULTIMATELY, THE LEGAL DESCRIPTION
10 WILL CONTROL NO MATTER WHAT WE CALL IT.

11 THE COURT: OF COURSE YOU DIDN'T GIVE ME
12 EXHIBIT 2.

13 MR. LEWIS: YOUR HONOR, WE DELIVERED TO THE
14 COURT A STACK THIS HIGH OF EXHIBITS, AND I HAVE --

15 THE COURT: OH, HERE IT IS. ALL RIGHT. SO ALL
16 OF THIS WOULD BE GETTING ATTACHED.

17 MR. DVEIRIN: AND RECORDED.

18 THE COURT: AND RECORDED ON THIS FILING, SO LET
19 ME SEE IF THERE'S A REFERENCE TO --

20 MR. MAMALAKIS: EXHIBIT 2, PAGE 1 OF 2 YOU'LL
21 SEE AT THE TOP, IT SAYS "EXHIBIT B," BUT UNDER THAT IT
22 SAYS "AREA A" -- "LEGAL DESCRIPTION OF AREA A," SO --

23 THE COURT: AS I WOULD SAY, "ALSO REFERRED TO
24 AS AREA A."

25 MR. MAMALAKIS: FINE, YOUR HONOR.

26 THE COURT: AND THEN THAT WOULD TIE US IN AND
27 THAT HAS THE PICTURE ALSO.

28 MR. DVEIRIN: OKAY.

1 THE COURT: ALL RIGHT. THEN IN PARAGRAPH 2,
2 PAGE 2 SUB (A) I PROPOSE SAYING: "IT'S HEREBY ORDERED,
3 ADJUDGED AND DECREED" -- THIS IS LINE 14 -- "VOID AND
4 ULTRA VIRES. IT IS CANCELED AND HAS NO LEGAL FORCE AND
5 EFFECT."

6 I THINK FROM THE COUNTY RECORDER'S PERSPECTIVE,
7 THEY DON'T KNOW FROM ULTRA VIRES. THEY DON'T KNOW
8 FROM -- THEY NEED TO SEE WORDS LIKE "CANCELED." SO THAT
9 WAS MY THINKING.

10 MR. LEWIS: THANK YOU, YOUR HONOR. THAT'S
11 HELPFUL.

12 THE COURT: IS THAT ALL RIGHT WITH EVERYBODY?

13 MS. HOGIN: NO OBJECTION.

14 THE COURT: ALL RIGHT. THEN SUB (B) SAME PAGE,
15 LINE 24 --

16 MR. MAMALAKIS: YOUR HONOR, WOULD YOU LIKE THE
17 SAME CHANGE TO THAT PARAGRAPH AS DID THE PRIOR.

18 THE COURT: NO. I DON'T WANT TO ATTEMPT TO
19 CANCEL A PORTION OF A DEED. THAT DEED IS NO GOOD. WE
20 NEED TO HAVE A NEW DEED AND THIS IS THE QUITCLAIM FROM
21 CITY OF PALOS VERDES TO WHOM -- LET'S SEE. THIS WAS
22 EXHIBIT 4.

23 MS. HOGIN: THE ASSOCIATION.

24 THE COURT: YEAH.

25 DO IT AGAIN. DO A NEW CLEAN DEED. AND THIS
26 DEED, RECORDED SEPTEMBER 5TH AS INSTRUMENT BLAH, BLAH,
27 BLAH IS HEREBY CANCELED, FOUND TO BE VOID.

28 MR. DVEIRIN: SO A NEW DEED FROM THE CITY TO

1 ASSOCIATION.

2 THE COURT: EXACTLY, AND THE EXISTING DEED
3 PARAGRAPH SHOULD SAY: "IS CANCELED, FOUND TO BE VOID TO
4 NO EFFECT, AND A NEW DEED" --

5 MR. DVEIRIN: SO FROM THE CITY.

6 THE COURT: -- BLAH, BLAH, BLAH "FROM THE CITY
7 TO THE ASSOCIATION ABSENT ANY ENCROACHMENT -- YOU KNOW,
8 "ABSENT CONDITIONS 5 AND 6" -- OR WHATEVER IT IS -- "IS
9 TO BE EXECUTED BY THE CITY, DELIVERED TO THE ASSOCIATION
10 OR DELIVERED TO PLAINTIFF AND TO BE RECORDED."

11 MR. DVEIRIN: IT SAYS "FROM LIEB TO THE
12 ASSOCIATION."

13 MR. MAMALAKIS: WE'RE DEALING WITH THE
14 PARAGRAPH ABOVE RIGHT NOW.

15 MR. DVEIRIN: OH, I SEE.

16 THE COURT: (B) FROM PALOS VERDES ESTATES TO
17 THE CITY TO THE ASSOCIATION, SO THAT NEEDS TO GET WIPED
18 OUT, ELIMINATED. IT WAS NO GOOD. YOU COULDN'T HAVE
19 THESE EXCEPTIONS. AND THEN THE NEW DEED DONE WHICH IS
20 CLEAN AND CLEAR.

21 ANY PROBLEM WITH THAT?

22 AND THEN I DON'T KNOW WHAT I DID WITH THE OTHER
23 NEW DEEDS, WHETHER I GAVE THEM TO PLAINTIFF TO RECORD OR
24 WHETHER I ORDERED THAT THE ASSOCIATION RECORD IT.

25 MR. LEWIS: I DON'T BELIEVE THE M.S.J. SPOKE TO
26 THAT. IN YOUR NOTES HERE, YOU WANT -- YOU INDICATED
27 THAT PLAINTIFFS' COUNSEL SHOULD TAKE CARE OF THE
28 RECORDATION.

1 THE COURT: SO THEN THIS IS TO BE ACCOMPLISHED
2 WITHIN TWO WEEKS?

3 MR. LEWIS: OF? TWO WEEKS OF WHAT, YOUR HONOR?

4 THE COURT: NOW -- OR THREE WEEKS. WHATEVER
5 IT'S GOING TO TAKE TO GET THAT NEW DEED DONE. YOU KNOW,
6 THREE WEEKS AFTER THE JUDGMENT IS SIGNED AND THE
7 ORIGINAL TO PLAINTIFF --

8 MR. DVEIRIN: SO HOW LONG?

9 THE COURT: -- FOR RECORDING.

10 MR. DVEIRIN: THREE WEEKS?

11 THE COURT: POSTJUDGMENT. YOU'VE GOT SOME
12 OTHER STUFF IN HERE WHERE YOU WANT TO DELAY THINGS 90
13 DAYS HERE AND 90 DAYS THERE.

14 MR. DVEIRIN: THAT WAS JUST FOR THE RECORDING
15 BECAUSE THE ORDER -- THE ONLY DATE THE ORDER USED ON
16 PAGE 19 WAS 90 DAYS, SO WE -- YOUR ORDER SAID 90 DAYS ON
17 PAGE 19, SO WE ALL AGREED WHEN WE SUBMITTED -- ALL THE
18 JUDGMENT FORMS WE SUBMITTED TO YOU, WE ALL AGREED THAT
19 90 DAYS WOULD BE THE DATE FOR RECORDING, FOR REMOVING
20 ANY PROPERTY --

21 THE COURT: I PROBABLY SHOULDN'T HAVE PUT IT
22 THAT FAR OFF, BUT IF YOU WANT TO DO THAT, I'M JUST
23 WORRIED ABOUT PEOPLE CHANGING THINGS OR DOING THINGS,
24 BUT I SUPPOSE I CAN INVALIDATE MORE TRANSACTIONS IF I
25 HAVE TO. SO WE'LL LEAVE IT TO 90 DAYS --

26 MS. HOGIN: NOBODY HAS CHANGED ANYTHING OR DONE
27 ANYTHING DURING THIS WHOLE LITIGATION, BUT CAN WE MAKE
28 IT --

1 THE COURT: SO WE'LL LEAVE IT 90 DAYS, ALL
2 RIGHT, LIKE EVERYTHING ELSE.

3 MR. DVEIRIN: THE THING IS, IS ALSO, YOU
4 KNOW --

5 THE COURT: AND, OF COURSE, AFTER THE ORIGINAL
6 IS RECORDED, THE ADDRESS ON THE DEED FOR COMMUNICATIONS
7 SHOULD NOT LIST PLAINTIFF. YOU DO IT LIKE ANY OTHER
8 DEED. YOU WOULD PUT IN THE UPPER LEFT-HAND CORNER, YOU
9 KNOW, CONTACT; AND SINCE IT'S FROM THE ASSOCIATION --
10 FROM THE CITY TO ASSOCIATION, YOU WOULD HAVE A CITY
11 ADDRESS ON THE UPPER LEFT-HAND CORNER. YOU KNOW WHAT
12 I'M TALKING ABOUT?

13 MR. MAMALAKIS: YES.

14 THE COURT: ALL RIGHT. BUT I JUST WANT TO MAKE
15 SURE THAT THE PLAINTIFF HAS THE OPPORTUNITY TO AND IS
16 RESPONSIBLE TO MAKE SURE EVERYTHING THAT NEEDS TO GET
17 RECORDED WILL GET RECORDED.

18 PARAGRAPH C, PAGE 2: "WITHIN 15 DAYS OF ENTRY
19 OF THIS JUDGMENT" -- SO THIS WAS NOT ALL 90 DAYS.

20 MR. DVEIRIN: WE DIDN'T -- WE -- OUR INTENT WAS
21 TO CHANGE EVERYTHING TO 90 DAYS.

22 THE COURT: THREE WEEKS DELIVER, 90 DAYS MAX TO
23 RECORDATION.

24 WOULD YOU PICK THAT UP, PLEASE.

25 ALL RIGHT. SO THEN WE HAVE "LIEB TO EXECUTE
26 AND DELIVER TO PLAINTIFFS' COUNSEL A QUITCLAIM DEED,"
27 AND IT SHOULD INSERT THERE "FROM LIEB TO THE
28 ASSOCIATION." AND THEN IT GOES ON FROM THERE TO

1 ELABORATE ON THE FACT THAT IT IS TO GO TO THE
2 ASSOCIATION.

3 MR. DVEIRIN: IT WAS IN D THAT WE ALL AGREED TO
4 90 DAYS, NOT IN C. AND I'M JUST TO UNDERSTAND IN E WHAT
5 EXACTLY YOU'RE SAYING IN E.

6 MR. MAMALAKIS: STAY ON D FOR A MOMENT.

7 I BELIEVE, D, YOUR HONOR, WE'RE STAYING WITH
8 THE 90 DAYS, AND YOU WANTED TO CHANGE THE ASSOCIATION TO
9 THE PLAINTIFF?

10 MR. DVEIRIN: OH, I SEE. THE PLAINTIFF SHALL
11 TAKE -- YOU WANT THE PLAINTIFF TO DO THE RECORDING?

12 THE COURT: YES. BUT, YOU KNOW, THESE THINGS
13 ARE KIND OF ALL OVER THE PLACE. ELSEWHERE YOU HAD THIS
14 90 DAYS THE ASSOCIATION SHALL TAKE ALL STEPS NECESSARY
15 TO RECORD A COPY OF THE JUDGMENT SO IT GOES INTO THE
16 CHAIN OF TITLE. AGAIN, I DON'T KNOW WHY WE'RE WAITING
17 THAT LONG.

18 MR. DVEIRIN: WE ALL AGREED ON THE 90 DAYS.

19 THE COURT: BUT I DON'T SEE 90 DAYS. WHEN A
20 JUDGMENT IS RENDERED, LET IT GET RECORDED IMMEDIATELY.
21 WHAT'S THE PROBLEM?

22 MR. LEWIS: YOUR HONOR, I'D AGREE TO ANY TIME
23 THAT YOU INDICATE, AS LONG AS DEFENDANTS CAN PREPARE
24 THE --

25 THE COURT: ALL RIGHT. WE'RE GOING TO DO
26 15 DAYS --

27 MR. DVEIRIN: BUT WAIT A MINUTE. I WANT TO BE
28 CLEAR ON THIS. WHEN I -- WHEN I ASKED FOR THE 90 DAYS

1 TO BE PUT IN THERE, I WAS -- I SAID AT THE TIME, THAT --
2 THAT THIS SHOULD BE COTERMINOUS WITH THE OTHER 90-DAY
3 WORK, AND ALSO, I HAD DOUBTS WITH WHETHER OR NOT THE
4 ASSOCIATION COULD GET ALL THESE STEPS NECESSARY TO
5 RECORD A COPY OF THIS JUDGMENT WITHIN 15 DAYS. THAT'S A
6 SHORT PERIOD OF TIME. WE DON'T MEET EVEN EVERY --

7 THE COURT: ALL WE'RE TALKING ABOUT RIGHT NOW
8 IS RECORDING THE JUDGMENT, NOT ALL THE FOLLOW-UP PAPERS,
9 NOT ALL THE FOLLOW-UP DEEDS.

10 MR. DVEIRIN: BUT THE JUDGMENT HAS TO BE
11 RECORDED AGAINST NUMEROUS PROPERTIES. THAT'S A MAJOR
12 UNDERTAKING BY AN ASSOCIATION OR THE PLAINTIFF WITHIN
13 15 DAYS. AND MY ASSOCIATION ONLY MEETS EVERY SO MANY
14 WEEKS, MAYBE EVEN ONE -- ONCE A MONTH, IF THAT. SO I'M
15 SAYING THAT -- SO I SAID TO HIM IS THAT 15 DAYS IS NOT
16 WORKABLE. WE ALL AGREED TO 90 DAYS. NO ONE IS TRYING
17 TO GET OUT OF RECORDING IT. BUT HAVING SOME EXPERIENCE
18 WITH RECORDING A DOCUMENT AGAINST 500 PROPERTIES, WHICH
19 I'VE DONE BEFORE, THAT'S TIME CONSUMING.

20 THE COURT: I HAD NOT BEEN AWARE THAT WAS YOUR
21 INTENTION.

22 MR. DVEIRIN: WELL, THERE'S A LOT OF PROPERTIES
23 THAT THIS JUDGMENT, APPARENTLY, IS GOING TO APPLY TO.
24 THEY HAVE TO BE RECORDED AGAINST ALL OF THOSE
25 PROPERTIES.

26 THE COURT: I DON'T SEE WHY.

27 MR. LEWIS: THIS PARTICULAR SUB PARAGRAPH JUST
28 DEALS WITH THIS PARTICULAR PROPERTY, PANORAMA PROPERTY.

1 THERE ARE OTHER LATER PORTIONS OF THE JUDGMENT WE
2 HAVEN'T GOTTEN TO YET.

3 CANDIDLY, YOUR HONOR, THERE'S BEEN FRANK
4 DISCUSSION ABOUT WHETHER SOME PARTIES ARE GOING TO FILE
5 AN APPEAL AND WHETHER OR NOT THAT APPEAL MIGHT STAY
6 CERTAIN OBLIGATIONS. SO I'M NOT SURE -- FOR EXAMPLE, IF
7 THE COURT WERE TO ORDER US TO TAKE AFFIRMATIVE ACTS,
8 LET'S SAY, IN FIVE DAYS, AND THE DEFENDANTS ALL FILE A
9 NOTICE OF APPEAL ON DAY FOUR, DOES IT REALLY MATTER WHAT
10 THE TIME PERIOD IS IF AN APPEAL IS INEVITABLE HERE?

11 MS. HOGIN: I'M NOT SURE WHAT THE ARGUMENT IS,
12 BUT THE CITY HAS NOT MADE A DECISION ABOUT THE APPEAL.
13 IN FACT, THE CITY HAS NOT DISCUSSED THAT DECISION
14 BECAUSE THERE'S NOT A JUDGMENT YET, AND THE CITY WOULD
15 LIKE ADEQUATE TIME TO LOOK AT IT. AND WE MEET,
16 ACCORDING TO THE BROWN ACT, TWICE A MONTH. SO THE
17 TIME -- IT'S NOT WASTED TIME; IT'S TIME WAITING FOR --

18 MR. DVEIRIN: YOU AT LEAST MEET MORE THAN WE
19 MEET.

20 THE COURT: I HAD NOT THOUGHT ABOUT THE ISSUE
21 OF RECORDING AGAINST 500 OTHER PROPERTIES AND WHETHER
22 THAT WOULD BE APPROPRIATE TO DO. I REALLY HADN'T
23 THOUGHT ABOUT IT.

24 IF IT'S RECORDED AS TO THIS ONE PROPERTY, WHICH
25 IS WHAT IS IN ISSUE -- IT SEEMS TO ME THAT THE LANGUAGE
26 IN IT IS STILL BROAD ENOUGH WITH THE CITY BEING ON
27 NOTICE OF IT AND THE ASSOCIATION BEING ON NOTICE OF IT,
28 THAT THEY CANNOT ACT OTHERWISE WITH REGARD TO OTHER

1 PROPERTIES. THIS COURT ONLY HAD BEFORE IT ONE PROPERTY
2 AND THE PARTIES INVOLVED WITH THAT ONE PROPERTY. THERE
3 HAS BEEN NO EFFORT TO ADJUDICATE SPECIFICS OF OTHER
4 PROPERTIES. SO I DON'T SEE WHY YOU'D BE FILING THIS AS
5 TO 500 PROPERTIES.

6 MR. DVEIRIN: WELL, I DON'T KNOW. I'M JUST
7 SAYING IS I MIGHT -- WHEN I READ YOUR ORDER, IT SEEMED
8 PRETTY CLEAR TO ME THAT YOU WERE MAKING CERTAIN
9 STATEMENTS REGARDING ALL THE PROPERTY IN PALOS VERDES.

10 THE COURT: THAT'S RIGHT.

11 MR. DVEIRIN: AND THAT THERE ARE OTHER PRIVATE
12 PROPERTIES -- A PRIVATE PROPERTY OWNER HERE, AND THERE
13 ARE OTHER PRIVATE PROPERTY OWNERS, THAT YOU INTENDED TO
14 BIND BY THIS PARTICULAR JUDGMENT. THEY ARE NOT ON
15 NOTICE OF IT --

16 THE COURT: WELL, YOU'RE BOUND ANYWAY. ALL
17 THESE RECORDED COVENANTS, DOCUMENTS, EVERYTHING ELSE
18 UNDER THE SUN --

19 MR. DVEIRIN: WE DON'T --

20 THE COURT: JUST A MINUTE -- BINDS YOU. THIS
21 GIVES YOU FURTHER NOTICE THAT YOU ARE BOUND BY THOSE
22 RESTRICTIONS, AND THEY ARE NOT INVALID, AND THEY ARE
23 STILL IN EXISTENCE. THAT PUTS YOU ON NOTICE.

24 IF THERE IS EVER ANY OTHER PROPERTY WHERE THESE
25 ISSUES ARISE, THIS IS GOING TO BE A RECORDED DOCUMENT,
26 AND YOU -- IT WOULD BE COLLATERAL ESTOPPEL AGAINST THE
27 CITY OR THE ASSOCIATION OR ANYBODY ELSE WHO FOOLED
28 AROUND WITH IT.

1 NOW WHETHER ANOTHER PROPERTY OWNER SOMEWHERE
2 DOWN THE LINE WOULD HAVE THE SENSE TO LOOK AT THIS
3 DOCUMENT THAT IS RECORDED AS TO AREA A, I DON'T KNOW,
4 MAYBE THEY'D NEVER NOTICE IT. BUT I DON'T THINK THAT I
5 CAN --

6 MR. DVEIRIN: YOU MAY BE RIGHT. WE CAN
7 RECORD --

8 THE COURT: I DON'T KNOW IF I CAN ORDER A
9 RECORDING AGAINST EVERY PROPERTY IN PALOS VERDES, BUT
10 YOU GUYS WOULD CERTAINLY, PROBABLY, BE FACING SOME SORT
11 OF ACTION IF YOU KNEW OF THIS ORDER AND THEN ATTEMPTED
12 TO ACT OTHERWISE IN OTHER INSTANCES.

13 MR. LEWIS: YOUR HONOR, FROM PLAINTIFF'S
14 PERSPECTIVE, WE'D LIKE THIS JUDGMENT RECORDED AGAINST
15 THIS PROPERTY, AND WE'RE NOT LOOKING TO RECORD AGAINST
16 ANY OTHER PROPERTIES. WE AGREE WITH ALL THE COMMENTS
17 THE COURT JUST MADE IN TERMS OF THE IMPACT OF NOTICE ON
18 THESE DEFENDANTS, AND WE THINK THAT'S SUFFICIENT.

19 THE COURT: WELL, I DO TOO, AND THAT MEANS TO
20 ME THAT THIS JUDGMENT SHOULD BE RECORDED AS SOON AS
21 POSSIBLE, AS SOON AS IT'S CONCLUDED. NOW WHETHER OR NOT
22 THE ACTS THAT ARE TO BE TAKEN HAVE TO BE TAKEN WITHIN
23 THREE WEEKS THEREAFTER OR 15 DAYS THEREAFTER OR 90 DAYS
24 THEREAFTER, THAT'S ANOTHER ISSUE.

25 MR. DVEIRIN: I DON'T DISAGREE WITH HAVING THIS
26 JUST LIMITED TO THIS PROPERTY. THAT'S MUCH EASIER ON
27 US. I'M JUST SAYING THAT THE PARTIES THAT ARE HERE ARE
28 ON NOTICE. WE'RE ALL HERE. LUGLIANI'S ATTORNEY IS

1 HERE, CITY'S HERE, I'M HERE, HE'S HERE.

2 THE COURT: WHAT DOES THAT GOT TO DO WITH THE
3 PRICE --

4 MR. DVEIRIN: SO WHETHER WE RECORD IT IN 100
5 DAYS, WHETHER WE RECORD IT 15 DAYS, THESE PARTIES HAVE
6 NOTICE.

7 THE COURT: BUT UNTIL THIS JUDGMENT IS
8 SIGNED --

9 MR. DVEIRIN: THAT'S DIFFERENT.

10 THE COURT: -- AND UNTIL IT IS RECORDED, THERE
11 IS NO NOTICE --

12 MR. DVEIRIN: THAT'S NOT TRUE.

13 THE COURT: -- TO ANYBODY ELSE IN THE WORLD AT
14 LARGE, AND --

15 MR. DVEIRIN: THAT'S RIGHT.

16 THE COURT: -- IT'S -- TO ME, IT'S WHAT'S
17 NEEDED TO TIE THE HANDS. IF THERE WAS GOING TO BE ANY
18 OTHER STUFF GOING ON.

19 MR. DVEIRIN: ON AREA A.

20 THE COURT: ANYWHERE.

21 SO WHAT DO YOU WANT TO DO? I WANT THE
22 RECORDATION VIRTUALLY IMMEDIATELY WITHIN, LIKE, THREE
23 WEEKS. TWO WEEKS AFTER THE RENDERING OF THE JUDGMENT, I
24 WANT THE JUDGMENT RECORDED. WHY IS THAT A PROBLEM?

25 MR. LEWIS: THREE WEEKS IS NOT A PROBLEM FOR
26 PLAINTIFFS, YOUR HONOR, IN TERMS OF RECORDING THE
27 JUDGMENT AGAINST THIS ONE PROPERTY.

28 THE COURT: ALL RIGHT.

1 MR. DVEIRIN: OKAY. THREE WEEKS FOR THIS ONE
2 PROPERTY.

3 THE COURT: AND THEN I HAVE PUT 15 DAYS FOR
4 LIEB TO EXECUTE A QUITCLAIM DEED. I GAVE THREE WEEKS
5 FOR THE CITY TO DO A NEW QUITCLAIM TO THE ASSOCIATION.
6 I DON'T SEE WHY THOSE SHOULD BE DATES THAT PRESENT
7 PROBLEMS. WITHIN 15 DAYS THE ASSOCIATION IS TO RECORD
8 THE JUDGMENT THAT'S ON PAGE 3, LINE -- SUBPARAGRAPH (D).

9 MR. DVEIRIN: IS THE PLAINTIFF RECORDING IT, OR
10 IS THE ASSOCIATION RECORDING IT?

11 MR. LEWIS: THE WAY IT READS IS "THE
12 ASSOCIATION."

13 MR. MAMALAKIS: I THOUGHT WE'D JUST AGREED --

14 THE COURT: DO YOU WANT TO HAVE THE ASSOCIATION
15 DO IT?

16 MR. DVEIRIN: I THOUGHT YOU CHANGED IT, YOUR
17 HONOR, TO THE PLAINTIFF.

18 THE COURT: YEAH, I DID.

19 MR. MAMALAKIS: AND WE JUST SAID THREE WEEKS.

20 THE COURT: LET'S LEAVE IT TO PLAINTIFF BECAUSE
21 YOU'RE GOING TO BE RECORDING THESE OTHERS.

22 MR. LEWIS: OKAY.

23 MS. HOGIN: AND WE SAID THREE WEEKS, RIGHT?

24 MR. DVEIRIN: THREE WEEKS.

25 THE COURT: WE WANT THREE WEEKS THERE. ALL
26 RIGHT. I HAD 15 DAYS, BUT WE'LL MAKE IT THREE WEEKS.

27 SUBPARAGRAPH (E), PAGE 3. I DID NOT DESCRIBE
28 THE LAND USE RESTRICTIONS IN THE COURT'S ORDER EXCEPT IN

1 VERY LOOSE WAYS AND BY REFERENCE TO OTHER DOCUMENTS.

2 MR. DVEIRIN: RIGHT, THAT'S TRUE.

3 THE COURT: SO IT SHOULD SAY: "THE COURT
4 DECLARES THAT THE LAND USE RESTRICTIONS SET FORTH IN THE
5 FOLLOWING INSTRUMENTS SETTING FORTH LAND USE
6 RESTRICTIONS ARE ENFORCEABLE AND APPLY TO THE OWNERSHIP
7 AND USE OF THE PROPERTY." AND THEN I TRUST THAT
8 PLAINTIFF HAS LISTED ALL THESE ZILLIONS OF DOCUMENTS
9 THAT RECITE OVER AND OVER AND OVER AND OVER AGAIN THE
10 LAND USE RESTRICTIONS.

11 MR. LEWIS: I PRESENTED MY EXHIBITS TO THE
12 DEFENDANTS. I THINK GENERALLY THEY ARE IN AGREEMENT
13 THAT MY EXHIBITS ARE ACCURATE. WHERE THERE WAS SOME
14 DISAGREEMENT IS WHETHER OR NOT THEY WERE COMPREHENSIVE.
15 AND I'LL LET THE DEFENDANT SPEAK TO THAT.

16 THE COURT: AND WE SHOULD RECITE IN THERE: SET
17 FORTH IN THE FOLLOWING INSTRUMENTS AND ONE OF THOSE
18 INSTRUMENTS SHOULD BE THE DEED -- THE ULTIMATE DEED FOR
19 AREA A SHOULD HAVE ATTACHED TO IT, SHOULD IT NOT?

20 MR. LEWIS: IF YOU'RE TALKING ABOUT THE --

21 THE COURT: DON'T MOST OF THESE DEEDS SAY ON
22 THEM, YOU KNOW, "CAN'T DO THIS, CAN'T DO THAT"?

23 MR. LEWIS: THE 1940'S DEEDS DO SAY THAT AND --

24 MR. DVEIRIN: AND THEY'RE HERE.

25 MR. LEWIS: -- THEY'RE ATTACHED AS EXHIBIT 6.

26 MR. MAMALAKIS: AND, YOUR HONOR, THE WAY WE
27 DEALT WITH THIS IS TO SAY WE LOOKED AT SUB PROVISION 6
28 -- IS TO SAY THAT THE EXCERPTS ARE EXCERPTS OF FULLY

1 RECORDED DOCUMENTS; AND, OF COURSE, THE FULLY RECORDED
2 DOCUMENT, ALL OF THE TERMS, AS APPLICABLE, APPLY.

3 MR. DVEIRIN: WELL, OUR CONCERN --

4 THE COURT: THEN YOU SAY THERE THAT THEY ARE
5 FOR INFORMATIONAL PURPOSES ONLY --

6 MR. DVEIRIN: IN TERMS OF THE EXCERPTS --

7 MR. MAMALAKIS: EXCERPTS --

8 THE REPORTER: ONE AT A TIME, PLEASE.

9 THE COURT: THE ENTIRE PROVISIONS OF THE
10 RECORDED DOCUMENT SUPPLY AND NOT JUST THE EXCERPTS.

11 MR. DVEIRIN: IF YOU LOOK HOW THICK THE
12 EXHIBITS ARE THAT PLAINTIFFS' COUNSEL SUBMITTED TO YOU,
13 THAT'S JUST A FEW PAGES FROM EACH OF THOSE DOCUMENTS.
14 SO ALL WE SAID IS THAT JUST BECAUSE WE'RE CITING TO
15 THESE FEW PAGES DOESN'T --

16 THE COURT: I SEE. ALL RIGHT. AND THAT'S WITH
17 REGARD TO EXHIBIT 5.

18 MR. DVEIRIN: YES.

19 THE COURT: ALL RIGHT. SO I WOULD JUST TAKE
20 OUT THE LANGUAGE DESCRIBED IN THIS COURT'S ORDER BECAUSE
21 I DON'T THINK I DESCRIBED THEM.

22 MR. LEWIS: VERY GOOD, YOUR HONOR.

23 THE COURT: IS THAT ALL RIGHT?

24 AND JUST GO OVER WHAT YOU HAVE INCLUDED BELOW
25 TO MAKE SURE THAT IT IS COMPREHENSIVE AND THAT IT COVERS
26 ALL OF THE RESTRICTIONS. ALL RIGHT?

27 YEAH, ON EACH ONE OF THESE I PUT A QUESTION
28 MARK. THE EXCERPTS? THE EXCERPTS? I DON'T KNOW. I

1 DON'T WANT TO COMPARE THEM, BUT YOU'RE MAKING SURE IT'S
2 ALL COVERED.

3 MR. LEWIS: DEFENDANTS ARE KEEPING ME HONEST,
4 YOUR HONOR.

5 THE COURT: I'M NOT SURE HOW TO CONSTRUE THAT.

6 MS. HOGIN: AND VICE VERSA.

7 MR. LEWIS: THEY ARE COLLABORATING WITH ME TO
8 MAKE SURE ALL THE NECESSARY INSTRUMENTS --

9 THE COURT: SO I DON'T NEED TO GO THROUGH THESE
10 LINE BY LINE. I CAN TRUST THAT YOU GUYS HAVE COVERED
11 THE FIELD.

12 MR. LEWIS: I'M COMFORTABLE WITH THE EXHIBITS,
13 YOUR HONOR.

14 THE COURT: PAGE 5, PARAGRAPH -- I'M SORRY,
15 POINT 5 SAYS: "THE DEED ALSO PROVIDES THAT THE
16 FOREGOING RESTRICTIONS ARE FOR THE BENEFIT OF ALL
17 PROPERTY OWNERS." I SUGGEST INSERTING "AND THE COURT
18 FINDS AND DECLARES THAT THE RUN WITH THE LAND ARE A
19 SERVITUDE," ET CETERA. THIS IS A DECLARATORY RELIEF
20 JUDGMENT, AND THAT SHOULD BE WHAT THE COURT IS
21 DECLARING.

22 MR. DVEIRIN: WE DIDN'T HAVE A PROBLEM WITH
23 THAT. WE DIDN'T THINK IT WAS NECESSARY, BUT WE DIDN'T
24 HAVE A PROBLEM WITH IT.

25 THE COURT: YOU'LL NOTICE IF YOU GO BACK TO
26 PAGE 3, SUB (E), LINE 6 THAT IT SAYS "THE COURT
27 DECLARES." IT'S -- WHEN IT'S A JUDGMENT, THE COURT HAS
28 TO BE DECLARING, ASSERTING, FINDING, WHATEVER. OKAY.

1 LET'S GO TO SUB (F) ON PARAGRAPH -- PAGE 6.

2 I DON'T KNOW WHY YOU PUT THE CITY IN THERE.

3 MR. LEWIS: I PUT THEM IN BECAUSE MY READING OF
4 THE 1940'S DEEDS IS WHEN THE CITY PASSED A RESOLUTION
5 ACCEPTING THESE PROPERTIES AND ACCEPTING THE TERMS --

6 THE COURT: IT HAS MORE THAN AREA A STILL IN
7 ITS POSSESSION.

8 MR. LEWIS: ACRES AND ACRES.

9 MS. HOGIN: MAY I BE HEARD, YOUR HONOR?

10 THE COURT: YES.

11 MS. HOGIN: THE CITY, WHEN IT'S A PROPERTY
12 OWNER, HAS THE OBLIGATION TO ABIDE BY CC&R'S THAT ARE
13 ENFORCEABLE AND VALID AS TO PROPERTY IT OWNS. WE AGREE
14 WITH THAT. THE CITY DOES NOT -- AND YOUR HONOR IS
15 CORRECT IN THIS -- HAVE THE RIGHT AND AFFIRMATIVE DUTY
16 TO ENFORCE THE CC&R'S, WHICH ARE A PRIVATE CONTRACT
17 BETWEEN THE ASSOCIATION AND THE PROPERTY OWNERS. SO AS
18 BETWEEN, FOR EXAMPLE --

19 THE COURT: WHERE IS THE PROPERTY OWNER? IT
20 HAS THAT DUTY.

21 MS. HOGIN: NOT -- TO ABIDE BY THEM, YES, AS
22 WOULD ALL PROPERTY OWNERS, ABSOLUTELY. BUT IN THAT SAME
23 WAY.

24 THE COURT: SO WHY DON'T WE SAY --

25 MS. HOGIN: IT JUST ISN'T CONSISTENT WITH THE
26 STATEMENT -- THIS IS A STATEMENT ABOUT THE ASSOCIATION'S
27 RIGHT TO ENFORCE THEM, AND THE COURT'S CORRECTION TO IT
28 IS ABSOLUTELY CORRECT.

1 THE COURT: WHY DON'T WE DO THIS: "THE
2 ASSOCIATION AND THE CITY, AS TO PROPERTIES BELONGING TO
3 IT, HAVE THE RIGHT AND AFFIRMATIVE DUTY TO ENFORCE THESE
4 ESTABLISHMENT RESTRICTIONS."

5 MS. HOGIN: IF THOSE PROPERTIES THAT THE CITY
6 OWN ARE SUBJECT TO THEM, RIGHT, BUT WE HAVEN'T
7 ADJUDICATED THAT. WE'VE BEEN KIND OF GOING OFF THE --

8 THE COURT: ALL OF THESE PROPERTIES HAVE THOSE
9 LIMITATIONS. WE ALL KNOW THAT.

10 MR. DVEIRIN: AND THEN WE ALL AGREE THIS WOULD
11 CONFORM TO YOUR ORDER AND SAY 90 DAYS, WHICH IS WHAT YOU
12 SAID.

13 THE COURT: ALL RIGHT. WE'LL GO BACK TO 90,
14 AND AGAIN, THIS IS AFTER ENTRY OF THE JUDGMENT.

15 MR. DVEIRIN: RIGHT.

16 THE COURT: NOW, DOWN PAGE 6, PARAGRAPH
17 SMALL i, LINE 22: "RETURN THE SPORTS FIELD TO ITS
18 ORIGINAL HILLSIDE SLOPE BY MOVING THE DIRT BACK UP
19 AGAINST THE 20-FOOT-HIGH RETAINING WALL BUT LEAVING THE
20 BELOW GROUND PORTION OF THE RETAINING WALL IN PLACE FOR
21 STABILITY REASONS." I DON'T KNOW WHAT YOU'RE TALKING
22 ABOUT. IF YOU'RE GOING TO KEEP THE 21-FOOT-HIGH
23 RETAINING WALL AND PUSH THE DIRT BACK UP AGAINST IT,
24 THAT'S ONE THING. IF YOU'RE GOING TO ELIMINATE THE WALL
25 AND HAVE NOTHING BUT THE BELOW GROUND PORTION, THAT'S
26 ANOTHER. YOU'VE GOT NOTHING TO PUSH YOUR DIRT UP
27 AGAINST THEN. SO WHAT ARE YOU TALKING ABOUT?

28 I'M INCLINED TO SAY: "RETURN THE SPORTS FIELD

1 AREA TO ITS ORIGINAL HILLSIDE SLOPE," PERIOD. BUT I CAN
2 SEE THE DANGERS THERE, AND I HAD HIGHLIGHTED THEM
3 PREVIOUSLY. BUT THIS IS -- THIS IS NOT COMPREHENSIBLE.
4 EITHER YOU HAVE 21 FEET WITH DIRT, OR YOU HAVE NOTHING
5 BUT THE STUBS UNDERGROUND AND NO DIRT.

6 MR. DVEIRIN: I THINK -- I MEAN, I'M FAR BE IT
7 TO SAY WHAT YOU MEANT -- PLAINTIFFS' COUNSEL MEANT, BUT
8 I THINK HE WAS SAYING TO LEAVE THE WALL IN PLACE AND
9 MOVE THE DIRT BACK UP AGAINST THE WALL SO VERY LITTLE OF
10 THE WALL WAS SHOWING KIND OF A SITUATION. ONE OF THE
11 REASONS FOR THE 90 DAYS IS THAT SOME OF THIS STUFF IS
12 GOING TO TAKE ENGINEERING. IT'S GOING TO TAKE -- WHAT
13 DO YOU CALL IT -- STABILITY ANALYSIS, GRADING ANALYSIS.
14 IT CAN'T BE DONE RIGHT AWAY. WE'RE NOT GOING TO
15 OBVIOUSLY -- WHOEVER IS DOING THE WORK IS NOT GOING TO
16 DESTABILIZE THE SLOPE --

17 THE COURT: I'M JUST GOING TO SAY: "RETURN THE
18 SPORTS FIELD TO ITS ORIGINAL HILLSIDE SLOPE OR AS CLOSE
19 AS POSSIBLE WITH COURT SUPERVISION." I'M GOING TO
20 ELIMINATE ALL THIS MOVING THE DIRT BACK, MOVING THE
21 BOTTO- -- I DON'T KNOW ANYTHING ABOUT THAT. I DON'T
22 KNOW WHAT'S NEEDED FOR STABILITY. SO IF THERE ARE
23 ANY -- "SUPERVISION IF DISPUTES ARISE."

24 MR. LEWIS: UNDERSTOOD.

25 THE COURT: OKAY. SO EVERYBODY WILL TRY AND
26 BRING IT BACK AS CLOSE AS POSSIBLE. THEY MIGHT END UP
27 ELIMINATING THE HEIGHT OF WHAT IS RETAINED IN CREATING A
28 MORE GRADUAL SLOPE ALL TOGETHER INSTEAD OF HAVING

1 ANYTHING THAT'S 21 FEET HIGH. IT WILL BE WHAT THE
2 ENGINEERS AND EVERYBODY FIGURE OUT.

3 THEN THERE'S A QUARREL WITH REGARD TO PAGE 7,
4 NUMBER 1 ABOUT HAVING THIS PHOTO ATTACHED. I DON'T CARE
5 IF IT IS OR IT ISN'T BECAUSE MY PARAGRAPH 2 GOES FURTHER
6 THAN YOU HAVE. IT INCLUDES ANY OTHER TREES OR BUSHES
7 PLANTED ON THE PROPERTY WITH THE LANDSCAPE TO BE
8 RESTORED AS IT WAS BEFORE ANY PLANTINGS. I DON'T CARE
9 IF THEIR BUSHES OBSCURE A VIEW. I DON'T CARE IF THEY'RE
10 LITTLE TREES. I DON'T CARE IF THEY'RE BIG TREES. IF
11 THEY WERE PLANTED, AS OPPOSED TO THE NATURAL GROWTH OF
12 THAT AREA, THEY'RE GONE.

13 MR. DVEIRIN: MY ISSUE WITH THIS IS THAT THE
14 PHOTOGRAPH WAS NOT PART OF THE ORDER, AND SO IT
15 SHOULDN'T --

16 THE COURT: FINE. YOU WANT IT OUT, WE'LL TAKE
17 IT OUT.

18 MR. DVEIRIN: MY CONCERN WAS -- IS THAT THERE
19 ARE TREES ON THE PROPERTY. I, AS I SIT HERE TODAY,
20 DON'T KNOW WHEN THEY WERE PLANTED. I'M SAYING THAT I
21 KNOW FROM MY PRIOR EXPERIENCE DEALING WITH TREES THAT
22 SOMETIMES THEY'RE THERE FOR STABILITY PURPOSES. AND
23 WHAT I SAID IN THE CHANGES TO THE JUDGMENT IS THAT THEY
24 BE REMOVED OR TRIMMED IN ORDER TO COMPLY WITH WHATEVER
25 REQUIREMENTS ARE IN THE ESTABLISHMENT DOCUMENTS. TREES
26 SOMETIMES CAN BE TRIMMED, IF NECESSARY, TO PRESERVE A
27 VIEW. THEY DON'T NEED TO BE REMOVED.

28 THE COURT: WE'RE NOT PRESERVING VIEW. WE'RE

1 ELIMINATING ANY TREES THAT WERE PLANTED. BUT SOMEWHERE
2 ELSE IN HERE I HAVE INDICATED THAT THE REMOVAL DOES NOT
3 HAVE TO BE BY TOTAL STUMP REMOVAL. I HAVE DONE ENOUGH
4 LANDSCAPING MYSELF. YOU CAN GO 6 INCHES BELOW THE
5 GROUND OR 3 FEET BELOW THE GROUND. THEY HAVE MACHINES
6 THAT CUT THEM DOWN IN THAT WAY, THAT WAY THE ROOT SYSTEM
7 REMAINS. THE ONLY THING THAT DOES NOT REMAIN IS THE
8 TRUNK THAT GOES UP ABOVE THE GROUND. IT'S NOT A BIG
9 PROBLEM.

10 MR. LEWIS: YOUR HONOR, I HAVE A CONCERN HERE
11 IN THAT WHAT EXISTS THERE NOW IS A WALL OF VEGETATION.
12 AND MY CONCERN IS THE ASSOCIATION IS BUILDING INTO THIS
13 JUDGMENT SOME DISCRETION TO SAY "TRUST US" --

14 THE COURT: NO, THEY'RE GOING TO HAVE TO GO
15 BACK TO THE ORIGINAL ESTABLISHMENT OF THIS AREA TO THE
16 BEST THEY CAN TO SEE IF, YOU KNOW -- WHAT IT WAS AT THE
17 TIME, WERE THERE EVER ANY DUES OR ASSOCIATION MONIES
18 PAID BY THE ASSOCIATION TO PLANT IT IN SOME REGARD.

19 I THINK IF THE ASSOCIATION CREATED A PROPER
20 LANDSCAPING, WHICH I THINK THEY HAVE THE POWER TO DO,
21 GENERALLY SPEAKING, ON ASSOCIATION LAND, THAT'S NOT THE
22 PROBLEM. THE PROBLEM IS PLANTED BY A PRIVATE PARTY --
23 AND MAYBE I SHOULD INDICATE THAT. IF YOU CANNOT FIND
24 THE HISTORICAL RECORDS OF WHAT KIND OF LANDSCAPING WAS
25 DONE, THEN WE'RE GOING TO HAVE TO ASSUME THEY WERE
26 PLANTED BY THESE PRIVATE PARTIES AND THEY'RE GOING TO
27 HAVE TO GO.

28 IF SOMEBODY HAS A BETTER SUGGESTION, I'M

1 LISTENING.

2 MR. DVEIRIN: MY SUGGESTION WAS THAT -- THAT --
3 AND I PUT IN OUR OBJECTIONS -- WAS THAT TREES, NO MATTER
4 WHO PUTS THEM THERE, NOT BE REMOVED IF THEY CAN BE
5 TRIMMED IN ORDER TO SATISFY THE CONCERNS OF PLAINTIFF;
6 THAT EITHER WAY THAT -- WHETHER WE DO WHAT YOU'RE SAYING
7 OR WHAT I'M SAYING, THERE'S GOING TO BE SOME DISCRETION
8 ON THE PART OF THE ASSOCIATION TO MAKE SOME
9 DETERMINATION AS TO WHAT WAS PLANTED, WHAT IS NECESSARY
10 FOR STABILITY PURPOSES, AND -- AND WHAT -- AND WHEN IT
11 WAS PUT THERE. WE CAN'T GET OUT OF DOING ANY
12 DISCRETIONARY ACTS, BUT THE IDEA THAT -- THAT -- WHAT I
13 UNDERSTOOD THEIR CONCERN WAS, WHICH WAS VISTA
14 PRESERVATION, WHICH WAS NOT IN YOUR ORDER, BUT THERE MAY
15 BE SOME LANGUAGE LIKE THAT IN THE ESTABLISHMENT
16 DOCUMENTS, THAT THAT DOESN'T REQUIRE REMOVAL OF TREES.
17 THAT'S ALL I WAS SAYING.

18 THE COURT: OKAY. "ROW OF LARGE (OVER 40 FOOT
19 HIGH) TREES IF PRIVATELY PLANTED ON THE PROPERTY.

20 TWO, "ANY OTHER TREES OR BUSHES PLANTED BY
21 PRIVATE PARTIES ON THE PROPERTY WITH THE LANDSCAPE TO BE
22 RESTORED AS IT WAS BEFORE SUCH PLANTINGS."

23 THEN "THE PILLARS, STATUES, AND WROUGHT IRON
24 GATES THAT WERE ERECTED AT THE ENTRANCE OF THE
25 DRIVEWAY" -- THERE'S BEEN NO QUARREL.

26 "THE DRIVEWAY" -- NUMBER 4, PAGE 7. I SEE NO
27 EVIDENCE THAT THERE'S ANY REASON TO KEEP THAT PRIVATE
28 ROAD. YOU SAY, "OH, IT'S A FIREBREAK." WHO SAYS IT IS?

1 MR. DVEIRIN: NO, THIS IS JUST ABOUT THE
2 DRIVEWAY, THE ENTRANCE. THE ENTRANCE IS NOT PART OF
3 AREA A -- IT'S NOT PART OF AREA A. IT'S PART OF THE
4 CITY'S RIGHT OF AWAY. IT'S JUST A DRIVEWAY. IT'S FOR
5 VEHICLE ACCESS.

6 THE COURT: AND IT GOES ON INTO AREA A.

7 MR. DVEIRIN: THE ROAD GOES INTO AREA A. THE
8 DRIVEWAY IS ON THE CITY'S RIGHT OF AWAY. IT'S NOT PART
9 OF AREA A. AND WHAT WE -- WHEN WE POINTED OUT IS THAT
10 THE ESTABLISHMENT DOCUMENTS THAT APPLY TO THIS DO NOT
11 DISALLOW A DRIVEWAY FOR AN EXISTING FIRE ROAD.

12 THE COURT: THIS IS NOT A DRIVEWAY. YOU'RE
13 TALKING ABOUT THE LIP OF THE ROAD.

14 MR. DVEIRIN: NO, I'M TALKING ABOUT THE
15 DRIVEWAY, NOT THE LIP.

16 THE COURT: THE DRIVEWAY GOES BEYOND THE GATE
17 INTO THE PARCEL.

18 MR. DVEIRIN: I MAY BE MISSING SOMETHING. I'M
19 JUST TALKING ABOUT THE DRIVEWAY FROM THE STREET ONTO THE
20 SIDEWALK THAT STARTS -- THEN THERE'S A GATE WHERE THE
21 ROAD STARTS.

22 THE COURT: THAT'S THE LIP OF A DRIVEWAY.

23 MR. DVEIRIN: RIGHT. THAT IS -- THE DRIVEWAY
24 IS THE LIP.

25 THE COURT: WHY WOULD YOU HAVE A LIP TO
26 NOWHERE?

27 MR. DVEIRIN: WELL, THE ROAD IS NOT GOING AWAY.

28 THE COURT: YES, IT IS.

1 MR. DVEIRIN: IT'S A FIRE ROAD.

2 THE COURT: NO, IT ISN'T. I HAVE NO EVIDENCE
3 THAT THAT ROAD IS A FIRE ROAD AS OPPOSED TO A POINT OF
4 BEAUTIFICATION BY THESE PRIOR OWNERS.

5 NOW, DON'T FORGET, ONCE THE ASSOCIATION, AGAIN,
6 OWNS THIS PROPERTY, IT HAS THE RIGHT TO DO CERTAIN
7 THINGS ON PROPERTIES THAT IT OWNS, WITH LIMITATIONS. SO
8 IF THE FIRE DEPARTMENT DECLARES THAT FIRE ROAD IS NEEDED
9 HERE, THEN PERHAPS -- I HAVEN'T REREAD THE
10 RESTRICTIONS -- YOU WOULD HAVE THE RIGHT TO PUT IN A
11 FIRE ROAD, BUT NOT THIS ONE.

12 MR. DVEIRIN: I MEAN, I MAY BE MISSING
13 SOMETHING HERE. I DON'T READ THE ESTABLISHMENT
14 DOCUMENTS OR YOUR COURT'S ORDER AS REQUIRING THE REMOVAL
15 OF A FIRE ROAD THAT'S THERE BY AN EASEMENT. I BELIEVE
16 THAT THAT PROVISION IN THERE --

17 THE COURT: YOU HAVE NO EVIDENCE FOR ME THAT
18 THIS WAS A FIRE ROAD.

19 MR. DVEIRIN: I BELIEVE THE RECORD IS CLEAR
20 THAT THERE'S AN EASEMENT FOR A FIRE ROAD THERE.

21 THE COURT: IT DOESN'T SAY THIS IS A FIRE ROAD
22 PURSUANT TO THAT EASEMENT. THIS GOES RIGHT THROUGH THE
23 MIDDLE OF AREA A, DOES IT NOT?

24 MR. DVEIRIN: IT'S BEEN THERE FOR A LONG TIME.

25 THE COURT: WELL, SO HAVE THE LIEBS AND THE
26 WHOEVERS THEY ARE. I FORGOT THEIR NAME. THEY'VE BEEN
27 THERE FOR YEARS AND YEARS AND YEARS AND NOBODY MADE ANY
28 ATTEMPT TO CURTAIL THEIR ACTIVITIES.

1 MS. HOGIN: THAT'S NOT ACCURATE, YOUR HONOR.

2 MR. DVEIRIN: I DON'T THINK IT'S DISPUTED HERE
3 THAT THERE'S AN EASEMENT FOR A FIRE ROAD. THIS JUDGMENT
4 DRAFT JUST REFERRED TO THE DRIVEWAY THAT WENT FROM THE
5 STREET ONTO THE SIDEWALK.

6 THE COURT: NO, THAT'S NOT A DRIVEWAY. MY
7 DRIVEWAY GOES FROM THE STREET ALL THE WAY UP TO MY
8 GARAGE. I HAVE NEVER HEARD OF "DRIVEWAY" MEANING THE
9 LIP THAT'S AT THE STREET.

10 MR. DVEIRIN: WELL, THEN CAN WE HAVE AN
11 AGREEMENT THAT THE LIP IS NOT TO BE REMOVED THEN,
12 BECAUSE THAT'S WHAT WE'RE TALKING ABOUT HERE.

13 THE COURT: NO. THE DRIVEWAY --

14 MR. DVEIRIN: SO YOU'RE SAYING THAT YOU
15 INTERPRET ITEM 4 AS BEING REMOVAL OF AN ENTIRE ROADWAY?

16 THE COURT: "THE DRIVEWAY CREATED BY PRIVATE
17 PARTIES IF NOT PROVEN TO THE COURT'S SATISFACTION TO BE
18 A FIRE ROAD" --

19 MR. DVEIRIN: WE'LL MAKE THAT SHOWING, YOUR
20 HONOR.

21 THE COURT: -- "WITHIN 90 DAYS POSTJUDGMENT."
22 OKAY.

23 MR. DVEIRIN: WE'LL COME BACK TO YOU WITH THAT
24 EVIDENCE, YOUR HONOR. IT'S AN EASEMENT FOR A FIRE ROAD.

25 MR. LEWIS: THERE'S A DIFFERENT -- WELL, WE CAN
26 COME BACK IN 90 DAYS.

27 MR. DVEIRIN: I DON'T REALLY BELIEVE THIS.
28 THIS IS DISPUTED, SO --

1 THE COURT: I'M GOING TO PUT HERE AND ALLOWED
2 BY DEED RESTRICTIONS. SO YOU'LL HAVE TO SHOW ME WHERE
3 IN ALL THESE RESTRICTIONS IT SAYS THAT YOU HAVE A RIGHT
4 TO PUT IN A FIRE ROAD AND THAT THESE EASEMENTS EXIST
5 OVER X PARCEL AND THE FIRE DEPARTMENT REGARDS THIS AS A
6 FIRE -- YOU KNOW, THE WHOLE THING.

7 THEN PAGE 7, ROMAN NUMERAL TINY iv, LINE 24.
8 THE ASSOCIATION -- "AFTER ALL REMOVAL AND RESTORATION
9 WORK IS COMPLETED, 90 DAYS POST JUDGMENT, YOU HAVE
10 15 DAYS AFTER THAT TO PREPARE PHOTOGRAPHIC EVIDENCE THAT
11 THE WORK IS COMPLETED AND PROVIDE THAT EVIDENCE TO ALL
12 PARTIES. THEREAFTER, NEITHER THE ASSOCIATION NOR THE
13 CITY SHALL ALLOW ANY NEW STRUCTURE," ET CETERA. INSTEAD
14 OF SAYING WHAT THEY SHALL NOT DO, IT SAYS NEITHER ONE OF
15 THEM SHALL ALLOW IT IF IT WOULD VIOLATE ALL THESE
16 DOCUMENTS AND DEED RESTRICTIONS.

17 MS. HOGIN: AND I JUST SAY VERY QUICKLY FOR THE
18 RECORD THAT I THINK THAT IS PROPERLY DIRECTED AT THE
19 ASSOCIATION, NOT THE CITY BECAUSE THE CITY DOESN'T
20 ENFORCE THE CC&R'S.

21 THE COURT: BUT THEY OWN A BUNCH OF OTHER
22 PARCELS SIMILARLY SITUATED.

23 MS. HOGIN: BUT THIS SENTENCE SPECIFICALLY
24 REFERS TO THE CAPITAL "P" PROPERTY, SO THIS IS REFERRING
25 TO THAT PROPERTY.

26 THE COURT: "AS TO SIMILARLY SITUATED
27 PROPERTIES OWNED BY IT (I.E. SUBJECT TO THOSE
28 RESTRICTIONS CITED ON PAGE 2 THROUGH 6.)"

1 OKAY. SO THAT LIMITS IT AGAIN TO THE
2 PROPERTIES WHICH IT OWNS AND THAT ARE SUBJECT TO THESE
3 SAME LIMITATIONS.

4 PAGE 8, PARAGRAPH --

5 MR. AVINA, TELL OUR JURORS THAT THEY CAN GO
6 DOWN AND WAIT ON THE SECOND FLOOR IF THEY WOULD LIKE.
7 THEY'VE BEEN SITTING THERE FOR 45 MINUTES. THANK YOU.
8 AND MAKE SURE THAT THE PEOPLE IN THE JURY ROOM KNOW TO
9 SUMMON THEM WHEN WE CALL. THANK YOU.

10 PAGE 8, THIS SAYS: "NOTHING CONTAINED IN THIS
11 JUDGMENT SHALL PROHIBIT ANY PARTY FROM ALLOWING
12 LANDSCAPING, PATHS OR OTHER IMPROVEMENTS WHOSE PURPOSE
13 AND EFFECT ARE TO IMPROVE THE QUANTITY AND QUALITY OF
14 THE COASTAL VIEW FROM THE PROPERTY OR PUBLIC ACCESS TO
15 THE PROPERTY AS PERMITTED UNDER THE DEED RESTRICTIONS,"
16 ET CETERA.

17 WHY IS THAT IN THERE?

18 MR. LEWIS: YOUR HONOR, THE 1940'S DEEDS SAY
19 THAT IF A GOOD NEIGHBOR, LIKE THE LUGLIANIS, WANT TO PUT
20 A BENCH OR SOME STEPS, SOMETHING THAT WOULD ALLOW THE
21 PUBLIC TO COME OUT AND ENJOY THE PROPERTY, THEY'RE
22 ALLOWED TO DO THAT. THEY JUST CAN'T PUT UP A
23 20-FOOT-HIGH RETAINING WALL.

24 THE COURT: AND I WOULD ADD THE LANGUAGE TO THE
25 LINE 3: "ACCESS TO THE PROPERTY TO THE EXTENT PERMITTED
26 BY AND IF DONE IN COMPLIANCE WITH ALL REQUIREMENTS."

27 WHY UNDER THE 1940 THINGS? WHY NOT EXHIBITS 5,
28 6, AND 7?

1 MR. LEWIS: WE CAN ADD THOSE, YOUR HONOR.

2 MR. DVEIRIN: THAT'S FINE. I MEAN, ALL THOSE
3 DOCUMENTS APPLY, BUT THE MAIN ONE THAT ALLOWS FOR THESE,
4 AS HE POINTED OUT -- PLAINTIFFS POINTED OUT THAT ALLOWS
5 FOR WORK IN THAT -- IN THOSE AREAS IS THE 1940 DEEDS.

6 THE COURT: SO I WOULD JUST LIKE TO MAKE IT
7 CLEARER TO THE -- "ONLY TO THE EXTENT PERMITTED BY THOSE
8 DOCUMENTS AND IF DONE IN COMPLIANCE WITH ALL THE
9 REQUIREMENTS OF THOSE DOCUMENTS."

10 MR. DVEIRIN: WE CAN SAY "JUST DONE IN
11 COMPLIANCE WITH THE ESTABLISHMENT DOCUMENTS" --

12 THE COURT: NO, WE CAN SAY WHAT I WROTE IN.

13 MR. DVEIRIN: NO, I UNDERSTAND. I'M SAYING WE
14 HAVE A TERM FOR ALL THE DOCUMENTS CALLED THE
15 "ESTABLISHMENT DOCUMENTS."

16 THE COURT: STILL RECITE 5, 6, 7, 8.

17 ALL RIGHT. THEN PARAGRAPH H, PAGE 8. I
18 DISAGREE WITH THIS. IT SAYS: "NOTHING CONTAINED IN
19 THIS" -- THIS IS QUOTE -- "IN THIS JUDGMENT SHALL
20 AUTHORIZE OR PROHIBIT ANY PARTY FROM TAKING ANY ACTIONS
21 OR FILING ANY LEGAL PROCEEDINGS TO COVER THE COSTS OF
22 ENCROACHMENT REMOVAL."

23 WOULDN'T THAT HAVE BEEN THE SUBJECT OF A
24 COMPULSORY CROSS-COMPLAINT?

25 NOW, INDEMNIFICATION, YEARS AGO, USED TO BE A
26 SEPARATE CAUSE OF ACTION. IT COULD NEVER BE FILED IN
27 THE MAIN LAWSUIT, NOT UNTIL YOU'VE BEEN DAMAGED BY
28 HAVING TO INCUR SOME EXPENSE. NOW, GIVEN AMERICAN

1 MOTORCYCLE IN THE AREA OF TORTS, WE'VE GOTTEN USED TO
2 SEEING INDEMNIFICATION ACTIONS INCLUDED. I'M NOT SURE
3 THAT IT IS A COMPULSORY CROSS-COMPLAINT, THOUGH. IT MAY
4 BE THAT INDEMNIFICATION ACTIONS ARE STILL OPTIONALLY
5 BROUGHT POST JUDGMENT, POST EXPENDITURES WHEN ALL THE
6 DAMAGE HAS BEEN DONE.

7 MR. DVEIRIN: I MEAN, I -- IN YOUR ORDER THIS
8 IS WHAT YOU SAID. I KNOW -- I HAVE IT HEAVILY MARKED --

9 THE COURT: WAS THIS LANGUAGE IN MY RULING --

10 MR. DVEIRIN: YES, YOU SAID IF SOMEONE HAS TO
11 GO AND TAKE SOME SORT OF ACTION AND INCUR COSTS --

12 THE COURT: THEN WE'LL TAKE IT OUT, AND WE'LL
13 LEAVE H.

14 WHAT IF PLAINTIFF HAS TO FILE FURTHER
15 PROCEEDINGS TO GET THIS TAKEN CARE OF? PLAINTIFF CAN'T
16 FILE ADDITIONAL ACTION OR DO ANYTHING?

17 MR. LEWIS: YOUR HONOR, MY UNDERSTANDING IS
18 THIS IS IN THE NATURE OF INJUNCTIVE RELIEF, AND IF, FOR
19 SOME REASON, THERE'S ANY VIOLATION AS TO THIS SPECIFIC
20 PROPERTY, WE CAN COME BACK HERE IN THIS --

21 THE COURT: BECAUSE I'M GOING TO RETAIN
22 JURISDICTION.

23 MR. LEWIS: AND WE'RE TALKING ABOUT CONTEMPT
24 AND IN VIOLATION OF AN INJUNCTION.

25 THE COURT: ALL RIGHT. I, IT SAYS: QUOTE,
26 "THE ASSOCIATION" -- SO H IS SAFE. "THE ASSOCIATION IS
27 ENJOINED FROM CONVEYING ANY RIGHT OR TITLE IN THE
28 PROPERTY TO ANY PARTY OTHER THAN AN ENTITY WHICH IS

1 AUTHORIZED BY LAW TO HOLD, MAINTAIN AND OPERATE PUBLIC
2 PARKLAND."

3 MY ONLY QUESTION WAS: IS THIS THE LANGUAGE OF
4 THE DOCUMENTS?

5 MR. LEWIS: IT IS. IT'S EXHIBIT --

6 THE COURT: SO WE DON'T HAVE TO WORRY ABOUT
7 THAT.

8 THEN IN J, LINE 13, I HAD SUGGESTED -- YEAH,
9 EXHIBIT 5 AND/OR THE DEED RESTRICTIONS, 6, 7, AND 8.
10 DOESN'T HAVE TO VIOLATE ALL OF THEM, JUST ANY OF THEM.

11 MR. LEWIS: WE AGREE WITH THAT CHANGE, YOUR
12 HONOR.

13 THE COURT: OKAY. LET'S GO TO PAGE 8, K --
14 PARAGRAPH K, 19 THROUGH 27. ALL THIS DISCUSSION OF
15 PRIOR LITIGATION, THAT DOESN'T BELONG IN MY JUDGMENT.
16 MY JUDGMENT IS DECLARING THINGS, RULING ON THINGS. WHY
17 IS THIS THROWN IN HERE?

18 MR. LEWIS: YOUR HONOR, IF YOU RECALL IN THE
19 M.S.J. RULING AT THE VERY END OF YOUR RULING, THE COURT
20 WAS SHOCKED TO DISCOVER THAT VERY SIMILAR ISSUES HAD
21 BEEN ADJUDICATED IN THE SCHOOL DISTRICT LITIGATION, AND
22 YOU FELT IT WAS SO IMPORTANT THAT YOU ACTUALLY ATTACHED
23 A COPY OF THAT SCHOOL DISTRICT JUDGMENT TO YOUR M.S.J.
24 RULING. AND SO THAT WAS THE REASON FOR THE REFERENCE TO
25 THE SCHOOL DISTRICT LITIGATION. NOW I SEE YOUR
26 HANDWRITTEN NOTATIONS THERE, AND I'M HAPPY TO MAKE THE
27 ADJUSTMENTS SO THAT IT JUST READS THAT THE REAL PROPERTY
28 IS SUBJECT TO THE RECORDED JUDGMENT OF THE L.A. SUPERIOR

1 COURT AND JUST CITE THIS CASE NUMBER. I'M HAPPY TO DO
2 THAT.

3 THE COURT: THE OTHER JUDGMENT WENT UP ON
4 APPEAL. THE APPEAL WAS DISMISSED, LEAVING THAT
5 JUDGMENT, I BELIEVE, INTACT.

6 MS. HOGIN: THIS CASE, THE M.O.U., WAS THE
7 SETTLEMENT OF THAT LITIGATION, SO THE APPEAL WAS
8 DISMISSED PURSUANT TO THE SETTLEMENT AGREEMENT.

9 THE COURT: YEAH, BUT THAT LEFT THE JUDGMENT
10 ALIVE AND WELL. SO WE COULD SAY SOMETHING LIKE --

11 MS. HOGIN: I THINK THE PARTIES DON'T DISPUTE
12 THIS. IN THE SETTLEMENT AGREEMENT WE SPECIFICALLY
13 ACCEPTED THAT JUDGMENT AS ENFORCEABLE, SO THERE
14 SHOULDN'T BE TOO MUCH CONCERN.

15 THE COURT: I JUST DON'T WANT TO INTRODUCE THAT
16 BECAUSE THEN WE COULD GET INTO ISSUES OF THE M.O.U. AND
17 BLAH, BLAH, BLAH, AND THAT WAS ALL RESOLVED, AND THAT
18 GAVE US PERMISSION TO DO WHAT WE DID HERE, AND -- I
19 DON'T WANT TO INTERJECT ANY ISSUES OF --

20 MR. LEWIS: YOUR HONOR, BASED ON THE BREADTH OF
21 YOUR RULING AND THE JUDGMENT, I WOULD BE COMFORTABLE IN
22 DELETING THE ENTIRE SUBPARAGRAPH (K).

23 THE COURT: I THINK WE CAN. I THINK YOU CAN
24 RECORD THAT JUDGMENT, PLAINTIFF, IF YOU WANT TO. IT'S A
25 JUDGMENT, AND YOU CAN RECORD IT IN THE CHAIN OF TITLE IF
26 YOU CHOOSE TO DO SO, BUT I WOULD THINK IT'S BETTER LEFT
27 OUT.

28 MR. LEWIS: SO WE'LL DELETE SUBPARAGRAPH (K),

1 YOUR HONOR.

2 THE COURT: YES, I THINK SO.

3 AND THEN PAGE 9, IT'S THE SAME THING.

4 MR. LEWIS: WELL, SEE, YOUR HONOR, THIS GETS
5 BACK TO THAT LARGER ISSUE WE TALKED ABOUT AT THE START
6 OF THE HEARING, THE 500 OTHER PROPERTIES AND THAT ISSUE.
7 THIS TALKS ABOUT OTHER PROPERTIES, NOT THE ONE OWNED BY
8 THE LUGLIANIS, BUT OTHER PROPERTIES THAT THE CITY OWNS
9 THAT ARE SUBJECT TO THE SAME DEED RESTRICTIONS AND THE
10 COURT'S FRUSTRATION THAT THIS WAS THE SECOND LAWSUIT
11 OVER THE SAME ISSUE.

12 MY POINT IN PARAGRAPH N WAS TO COME UP WITH
13 SOME SORT OF RELIEF THAT WOULD ADDRESS THE COURT'S
14 CONCERN, AND THIS DOESN'T SAY RECORD AGAINST 500
15 PROPERTIES --

16 THE COURT: THIS IS FINE. AND YOU CAN ALSO
17 RECORD THE OTHER DOCUMENT. THIS WAS NOT OBJECTED TO IN
18 THE OBJECTIONS THAT WERE FILED, SO I'LL LEAVE IT.

19 PARAGRAPH 3 ON THAT SAME PAGE OF 9, I DID NOT
20 MAKE ANY RULINGS ABOUT THE WASTED PUBLIC FUNDS. THAT
21 SHOULD BE OUT OF THERE. SAME THING WITH THE NEXT PAGE,
22 PAGE 10, SUBPARAGRAPH (A), SUBPARAGRAPH (B).

23 MR. DVEIRIN: SUBPARAGRAPH (C).

24 THE COURT: AND (C).

25 MR. LEWIS: WELL, YOUR HONOR, MAY I BE HEARD
26 BRIEFLY ON THAT?

27 THE COURT: YES.

28 MR. LEWIS: THE COURT HAS SAID PROSPECTIVELY IN

1 TERMS OF INJUNCTIVE RELIEF, THE CITY MAY NOT USE ZONING
2 ORDINANCES TO CREATE A SPECIAL LAND USE DISTRICT. A
3 NATURAL IMPLICATION OF THAT HOLDING IS THAT THE PAST
4 WORK DONE BY THE CITY WAS ULTRA VIRES AND BEYOND THE
5 CITY'S POWER. SO THIS IS A SEPARATE CAUSE OF ACTION,
6 AND ON APPEAL, THIS IS GOING TO BE A SECOND ARGUMENT AS
7 TO WHY THE JUDGMENT SHOULD BE AFFIRMED. AND I RECALL
8 YOUR M.S.J. RULING DID SPECIFICALLY FIND THAT THE SECOND
9 CAUSE OF ACTION FOR ULTRA VIRES WAS FOUND TO BE IN
10 PLAINTIFFS' FAVOR. I'LL BE HAPPY TO PULL THAT LANGUAGE.

11 THE COURT: YES, BUT I DIDN'T SAY ENTERING INTO
12 THE M.O.U. WAS OUTSIDE ITS ABILITY. I SAID, FINE, ENTER
13 INTO WHATEVER YOU WANT, BUT YOU CAN'T CARRY OUT THE
14 PERFORMANCE WHICH YOU HAVE PROMISED.

15 MS. HOGIN: THAT ONE ASPECT OF IT, BUT THE
16 OTHER ASPECTS -- AND THAT'S WHY, I THINK, THE COURT
17 DIDN'T GET INTO PUBLIC FUND ISSUES, BECAUSE YOU CAN'T
18 SEGREGATE OUT THE DARK SKIES, REQUIREMENTS WERE FINE,
19 THE REAFFIRMATION BY THE DISTRICT OF ALL THE DEED
20 RESTRICTIONS WERE FINE. THERE WERE -- IT WAS JUST THE
21 PART THAT --

22 THE COURT: THERE WAS A LOT OF PARTS, BUT IN
23 ALL EVENTS, I SAID, GO AHEAD. ENTER INTO AGREEMENTS.
24 CITY CAN ENTER INTO AGREEMENTS, BUT I'M STOPPING YOU
25 FROM PERFORMING THAT WHAT YOU PROMISED TO PERFORM UNDER
26 THIS AGREEMENT.

27 ALL RIGHT. SO NOW WE GO DOWN TO PARAGRAPH 3,
28 WHAT WAS D WOULD BECOME 1. NOW, YOU'VE SET: "UNLESS

1 THEY HAVE SUCCESS" -- "THE ASSOCIATION HAS SUCCESSFULLY
2 COMPLIED WITH THE AMENDMENT PROCEDURES DESCRIBED IN
3 ARTICLE 4, SECTIONS 1, 2, OR 3 OF THE ATTACHED
4 EXHIBIT 3." I HAVE NO IDEA WHAT THAT IS.

5 BUT THEN IT SHOULD SAY: "AND THEN ONLY ALSO IN
6 ACCORDANCE WITH" -- THIS IS PARAGRAPH 2, SUB (E)(i)
7 THROUGH PARAGRAPH 2, SUB (E) 3 -- WHERE'S 3? YOU MISSED
8 3 -- NO, YOU DIDN'T. WELL, "ALL DOCUMENTS DESCRIBED IN
9 PAGES 2 [SIC] THROUGH 9," I THINK IT IS -- OH, "3
10 THROUGH 9" --

11 MS. HOGIN: WAS IT IDENTIFIED?

12 THE COURT: -- "OF THIS DOCUMENT, INCLUDING
13 EXHIBITS 5, 6, 7, AND 8."

14 ALL RIGHT. BECAUSE I DON'T KNOW WHAT'S TUCKED
15 IN, IN ALL THOSE OTHER DOCUMENTS ABOUT THEIR APPROVAL
16 SYSTEMS AND WHAT THEY HAVE TO DO AND WHAT VOTES THEY
17 HAVE TO OBTAIN AND FOR WHAT PARTICULAR TYPES OF
18 PURPOSES, SO JUST INCORPORATE THE WHOLE THING.

19 MR. DVEIRIN: THAT SHOULD BE THE SAME FOR E
20 TOO, THEN, RIGHT?

21 THE COURT: LET'S SEE.

22 MR. DVEIRIN: YOU SAY THEY'RE REDUNDANT, SO --

23 THE COURT: "UNLESS THE ASSOCIATION HAS
24 COMPLIED WITH THOSE AND ALL DOCUMENTS DESCRIBED IN PAGES
25 3 THROUGH 9 OF THIS DOCUMENT, INCLUDING EXHIBITS 5, 6,
26 7, AND 8, HERETO." CAN'T BE A LAWYER WITHOUT ADDING A
27 "HERETO."

28 AND THEN THE NEXT PARAGRAPH, F, I PROPOSE TO

1 TAKE OUT.

2 MS. HOGIN: WHICH IS CONSISTENT.

3 THE COURT: YEAH, I'M JUST NOT ENJOINING THE
4 USE OF PUBLIC FUNDS. THEY SIMPLY CAN'T DO THESE THINGS,
5 AND IF THEY START TO DO IT, PRESUMABLY I'LL STOP THEM.
6 BUT IT MIGHT BE ASPECTS OF WHAT THEY'RE DOING, THAT'S
7 OKAY, AND OTHER ASPECTS THAT ARE NOT. LIKE IN OUR
8 M.O.U. SITUATION, SO THEY SIMPLY CAN'T DO IT.

9 G, THIS IS THIS PUBLIC FUNDS THING AGAIN. AND
10 H -- I'M NOT GOING TO OPEN A WINDOW TO THIS ARGUMENT
11 OVER MINISTERIAL VERSUS NON-MINISTERIAL. YOU DO WHAT
12 YOU DO, AND I'LL DO WHAT I DO.

13 THIRD CAUSE OF ACTION FOR ABATEMENT OF
14 NUISANCE. I DON'T KNOW WHY YOU SAY THAT WAS PLED IN THE
15 ALTERNATIVE. WHY WAS IT IN THE ALTERNATIVE? IT'S FIRST
16 CAUSE OF ACTION, SECOND CAUSE OF ACTION, THIRD CAUSE OF
17 ACTION. THEY WERE GUILTY OF NUISANCE. ALL OF THESE
18 DOCUMENTS MAKE THEM GUILTY OF NUISANCE, PERIOD.

19 MR. LEWIS: YOUR HONOR, RESPECTFULLY, THE
20 NUISANCE CAUSE OF ACTION IS FACT INTENSIVE, AND WE'RE
21 HERE FOLLOWING A MOTION FOR SUMMARY JUDGMENT. I DIDN'T
22 MOVE FOR SUMMARY JUDGMENT --

23 THE COURT: THERE'S NOTHING FACT INTENSIVE
24 ABOUT IT. DIDN'T YOU READ ALL THOSE EXHIBITS, 5, 6, 7,
25 AND 8? IT SAYS IT'S IPSO FACTO A NUISANCE FOR ANYBODY
26 TO VIOLATE ANY OF THE TERMS AND RESTRICTIONS. THIS
27 COURT FOUND THAT THEY DID. THAT'S THE END OF THE STORY
28 ON WHETHER THERE WAS A NUISANCE.

1 MR. MAMALAKIS: YOUR HONOR, IF I MAY BE HEARD.
2 AS PLAINTIFFS' COUNSEL WAS SAYING, THEY DID NOT MOVE FOR
3 SUMMARY ADJUDICATION. ON SUMMARY JUDGEMENT ON THE
4 NUISANCE CAUSE OF ACTION, THEY SPECIFICALLY REQUESTED
5 THAT IF YOU RULED IN THEIR FAVOR ON THE FIRST TWO CAUSES
6 OF ACTION, YOU DISMISSED THE NUISANCE CAUSE OF ACTION
7 BECAUSE IT WAS PLED IN THE ALTERNATIVE; THEREFORE,
8 THERE'S NOTHING IN YOUR JUDGMENT -- THERE WAS NOTHING
9 BEFORE YOU TO FIND ON --

10 THE COURT: SUMMARY JUDGMENT ASKED FOR A
11 JUDGMENT ON EVERYTHING.

12 MR. MAMALAKIS: THAT'S WHY THEY ASKED FOR YOU
13 TO DISMISS THE THIRD CAUSE OF ACTION SO YOU COULD GET
14 JUDGMENT.

15 THE COURT: NOW, THEY WANT ME TO FIND IT'S
16 MOOT. IT'S ALTERNATIVE, IT'S THIS, IT'S THAT. NO, NO,
17 NO.

18 "AS TO THE THIRD CAUSE OF ACTION FOR ABATEMENT
19 OF NUISANCE ON PLAINTIFFS' MOTION, THAT CAUSE OF ACTION
20 IS AND WAS DISMISSED IN LIGHT OF THE JUDGMENT RENDERED
21 AS TO ALL OTHER MATTERS."

22 MR. LEWIS: VERY GOOD, YOUR HONOR.

23 THE COURT: "AS THE PREVAILING PARTIES,
24 PLAINTIFFS ARE ENTITLED TO RECOVER THEIR COSTS IN THE
25 SUM OF AND THEIR ATTORNEY'S FEES IN THE AMOUNT OF
26 BLANK."

27 ARE YOU RELYING ON THE PRIVATE ATTORNEY GENERAL
28 STATUTE?

1 MR. LEWIS: WE ARE AND ON THE COURT'S FINDING
2 IN THE M.S.J. RULING THAT THIS ACTION VINDICATED AN
3 IMPORTANT PUBLIC INTEREST.

4 THE COURT: AND IT DID. OKAY.

5 MR. MAMALAKIS: YOUR HONOR, ON THAT -- WE WOULD
6 LIKE TO BE HEARD ON THAT. WE THINK THAT THE PROPER WAY
7 TO PROCEED ON THE ATTORNEY'S FEES IS BY MOTION --

8 THE COURT: MR. AVINA, WOULD YOU MAKE FOUR NEW
9 COPIES OF THIS WITH ADDITIONAL SCRIBBLING.

10 MR. DVEIRIN: MAY I MAKE A SUGGESTION, YOUR
11 HONOR, THAT WE, IN GOOD FAITH, CIRCULATE A RED LINE OF
12 YOUR CHANGES AMONGST OURSELVES SO WE CAN MAKE SURE THAT
13 WE GOT CORRECT WHAT YOU HAVE --

14 THE COURT: THOSE CHANGES THAT YOU'RE NOW
15 HOLDING ARE NOT THE CHANGES THAT I HAVE MADE. WE HAVE
16 THE RECORD, WHICH YOU CAN GET AND LOOK TO, TO HELP YOU
17 DECIPHER MY DIFFICULT HANDWRITING, BUT I THINK YOU
18 SHOULD HAVE A COPY OF MY SCRIBBLINGS IN THEIR FINAL
19 FORM. YOU DON'T WANT THAT?

20 MR. DVEIRIN: NO, WE DO.

21 MR. LEWIS: WE DO. HE JUST WANTED TO MAKE SURE
22 THAT WASN'T GOING TO BE THE END OF THE CONVERSATION.

23 MR. DVEIRIN: THAT WE SHOULD, AMONGST
24 OURSELVES, MAKE SURE THAT WE ARE IN AGREEMENT AS TO WHAT
25 YOU SAID --

26 THE COURT: MR. AVINA, PUT A BIG "2" ON THE
27 FIRST PAGE OF IT WHERE IT SAYS "JUDGE'S COPY." JUST PUT
28 "2" SO THEY WON'T GET IT MIXED UP WITH THE FIRST COPY I

1 GAVE THEM TO LOOK AT. THANK YOU.

2 MR. LEWIS: DO YOU WANT TO GIVE THE PARTIES
3 ADDITIONAL TIME TO RUN WITH YOUR COMMENTS, INCORPORATE
4 YOUR COMMENTS, AND PRESENT A CLEAN JUDGMENT FOR
5 SIGNATURE?

6 THE COURT: YES, I'D LIKE NOT TO HAVE ANOTHER
7 HEARING. I JUST WANT TO RECEIVE A COPY OF THE PROPOSED
8 JUDGMENT WITHIN TEN DAYS, AND THAT SHOULD HAVE THIS
9 MONSTER ATTACHED TO IT.

10 MR. LEWIS: ALL THE EXHIBITS, YOUR HONOR, YES,
11 EXCEPT FOR THE PHOTOGRAPHS.

12 THE COURT: YES. ALL RIGHT. SO LET ME MAKE
13 THIS RULING.

14 MR. LEWIS: YOUR HONOR, TEN DAYS WOULD BE
15 SATURDAY THE 19TH. MIGHT I SUGGEST MONDAY THE 21ST?

16 THE COURT: PLAINTIFF IS TO SUBMIT A PROPOSED
17 JUDGMENT FOR SIGNATURE BY 9-21-15. THERE WILL BE NO
18 FURTHER HEARING. OH, AND THE LANGUAGE, PLEASE, AT THE
19 END OF THIS THING THAT "THE JUDGE RETAINS JURISDICTION
20 TO ENFORCE ALL TERMS OF THIS JUDGMENT."

21 THERE WILL BE NO FURTHER HEARING UNLESS
22 REQUESTED EX PARTE ON SOME SERIOUS ISSUE.

23 MR. DVEIRIN: WE MAY NEED TO GET BACK TO YOU,
24 YOUR HONOR, AS YOU SAID, ON THE FIRE ROAD ISSUE, JUST SO
25 YOU KNOW, BECAUSE --

26 MR. LEWIS: THAT SHOULDN'T EFFECT ENTRY OF
27 JUDGMENT. MY UNDERSTANDING OF THE COURT'S COMMENTS IS
28 WE ENTER JUDGMENT; WITHIN 90 DAYS OF THAT, THE

1 ASSOCIATION IS GOING TO GET BACK TO THE CITY WITH SOME
2 EVIDENCE CONCERNING THE FIRE ISSUE.

3 THE COURT: AND I PROPERLY FRAMED THE LANGUAGE
4 TO LEAVE A WINDOW FOR THAT, DID I NOT?

5 MR. DVEIRIN: YES, YOU DID.

6 THE COURT: ALL RIGHT.

7 MR. DVEIRIN: I'D JUST REMIND THE COURT THAT
8 THAT IS AN ISSUE THAT WE STILL NEED TO RESOLVE.

9 THE COURT: THERE MAY BE OTHERS. THERE MAY BE
10 THE SLOPE ISSUE. THERE MAY BE THE BUSHES ISSUE. MAYBE
11 THAT I'LL BECOME OLDER AND GRAYER WHILE THIS THING IS
12 STILL BEING KNOCKED AROUND, BUT SO BE IT.

13 LET ME HAVE MY COPY, MR. AVINA. I JUST WANT TO
14 WRITE THAT IN ON THE BOTTOM, AND YOU'LL WRITE IT IN ON
15 THE BOTTOM OF ALL OF YOURS, PLEASE.

16 AND THEN, FINALLY, I'M GOING TO ADD HERE: "ALL
17 PARTIES ARE ENJOINED FROM CHANGING ANY ASPECTS OF AREA A
18 OR THE LEGAL POSTURE OF THE ISSUE AND ISSUES IN THIS
19 CASE UNTIL AFTER THE JUDGMENT IS SIGNED AND ENTERED,
20 I.E. STATUS QUO IS TO BE MAINTAINED."

21 SO THAT DOES NOT MEAN THAT THE ASSOCIATION AND
22 THE CITY CAN'T LOOK INTO ISSUES, CAN'T START WITH
23 ENGINEERING THINGS, YOU KNOW ALL THAT KIND OF GOOD
24 STUFF. BUT I DON'T WANT SOME OTHER ACTION IN SOME OTHER
25 COURT TO SUDDENLY POP UP TO DEAL WITH SOME SORT OF
26 ANCILLARY ISSUE AND END UP WITH RELATED CASES. YOU
27 UNDERSTAND. I JUST WANT TO KEEP EVERYTHING STILL UNTIL
28 WE'RE HERE.

1 MR. MAMALAKIS: THIS ISN'T MEANT TO BE A
2 PROHIBITION ON APPEAL?

3 THE COURT: OF COURSE NOT. OF COURSE NOT. BUT
4 YOU DON'T HAVE ANYTHING TO APPEAL UNTIL MY JUDGMENT IS
5 RENDERED, AND I'M JUST SAYING, UNTIL WE GET THAT DONE, I
6 DON'T WANT ANYBODY CHANGING THINGS. I JUST WANT TO KEEP
7 IT STILL UNTIL THAT'S FINISHED.

8 CLERK TO GIVE NOTICE.

9 * * *

10 (THE PROCEEDINGS WERE CONCLUDED AT
11 11:26 A.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 12

HON. BARBARA A. MEIERS, JUDGE

CITIZENS FOR ENFORCEMENT OF)
PARKLAND COVENANTS AND JOHN)
HARBISON,)

PLAINTIFF,)

VS.)

CASE NO. BS142768

CITY OF PALOS VERDES)
ESTATES, A MUNICIPAL)
CORPORATION; PALOS VERDES)
HOMES ASSOCIATION, A)
CALIFORNIA CORPORATION;)
ROBERT LUGLIANI AND DELORES)
A. LUGLIANI, AS CO-TRUSTEES)
OF THE LUGLIANI TRUST;)
THOMAS J. LIEB, TRUSTEE, THE)
VIA PANORAMA TRUST U/DO MAY)
2, 2012 AND DOES 1 THROUGH)
20)

DEFENDANTS.)

I, CINDY DUYNSTEE, CSR NO. 12938, PRO TEMPORE
OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 41,
INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT
OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
ABOVE-ENTITLED CAUSE ON SEPTEMBER 9, 2015.

DATED THIS SEPTEMBER 10, 2015.



CINDY DUYNSTEE, CSR 12938
PRO TEMPORE OFFICIAL REPORTER