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Superior Court of California
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CITIZENS FOR ENFORCEMENT, et. al.

Plaintiffs,

vs.

CITY OF PALOS VERDES ESTATES, et. al.

Defendants

CASE NO. BS 142768

(Tentative) RULING ON DEMURRERS AND MOTION TO STRIKE

The court having taken the demurrers of the PVHA, the Luglianis and Thomas Lieb, trustee to the First Amended Petition for Writ of Mandate and Complaint for Injunctive Relief under submission as well as the defendants' joined- in Motion to Strike, and having advised counsel that a tentative ruling would issue subject to further oral argument being offered and heard on a later date, the court now issues that "tentative" per the attached and sets May 21, 2014 at 9:30 a.m. Department 12 for a further hearing unless by stipulation the further hearing is waived and an Amended Petition/Complaint is filed and served within 25 days of mailing of this ruling. If no one appears on May 21, 2014, it will be assumed that the court's tentative has been accepted as the court's ruling by the parties, and it will automatically become the ruling.

April 11, 2014

Hon. Richard H. Meeus
Judge of the Superior Court

TENTATIVE RULING

Preface and Motion to Strike:

The court's intended ruling is to sustain the demurrers in part and to deny them in part. Defendants have objected to the addition of the plaintiff Harbison and filed a motion to strike with regard thereto. That motion is denied. Moreover, due to the issues of standing which have been raised, it appears that further corrections or additions to who the plaintiffs are or will be and/or further facts supporting their ability to bring suit are needed. This is in part because once the mandate petition was denied, the nature of the case changed. The denial of an administrative mandate petition is an appealable judgment. It has become common practice for parties to add into a Petition for a Writ of Mandate a whole series of civil claims, but this court has found no authority in applicable Codes for doing so. Here, the denial of the action for mandamus relief has been upheld on appeal, and the court has determined to treat the remainder of the case in keeping with its present "civil" nature. To do so, the court has determined to order the case severed, with all of the mandate claims and issues bifurcated in keeping with the final judgment rendered on those matters, and orders that the case is now converted to a simple civil action (just as an unlawful detainer action is dealt with as a civil action once possession is surrendered albeit that is done per Code), and the amended document now to be filed is to be designated a Second Amended Complaint.

Were the court to strike plaintiff's addition of the Harbison plaintiff at this juncture, all that would happen is that plaintiff would file a motion for leave to amend with that Mr. Harbison ultimately ending up being added in all events (since defendants have articulated no reason that the court deems meritorious for his being an improper plaintiff) but at greater expense and duplication of effort for all, particularly in light of this court's view that some standing pleading issues still remain to be addressed, even perhaps as to Mr. Harbison (see discussion infra). If these issues call for the addition of more or different plaintiffs, again, rather than see another suit filed for that purpose, this court grants advance consent to such amendments to be accomplished in the Second Amended Complaint since an Amended Complaint is going to be necessary in all events and the court would like to see that pleading be the final pleading needed in the case.

It is interesting to note that in the case of Save the Welwood Murray Memorial Library Com.

Case, infra at 1017--1018, the court obliquely addresses the problem of the filing of "hybrid actions," where a mandamus action, which is supposed to utilize a "Petition," is mixed in with requests for relief which are not in the nature of mandamus and which generally call for the filing of a "Complaint," and concludes that such an action may proceed, but recognizes that these pleadings are not necessarily properly coupled. In this court's view, it would be better if the two matters were and had been separately filed but as "related cases."

Be that as it may, the mandamus aspect of the original Petition is at an end, plaintiff's appeal of the trial court ruling denying mandamus having been unsuccessful. However, because the matters were mixed, in this case, the Petition/Complaint has ended up with what are now many pages of surplusage, including but not limited to pages relating the history of the deed restrictions and pages of facts relating to "estoppel"[1] and lengthy explanations as to why an act is ministerial or not, discussions of the settlement agreement which led to the City acquisition of the property, etc. which serve no purpose at this point other than to confuse and overburden the pleading.

If the court understands the plaintiffs' contentions, they are in a nutshell that the City received a deed to real property, Area A, which was subject to various restrictions such as a restriction on use to parkland, restrictions on the ability to convey other than to a governmental entity and a couple of other pertinent restrictions; that despite these restrictions, by means of an allegedly *ultra vires* act, the City purported to convey the property, Area A, to a private party, the PVHA, which conveyance the plaintiffs now seek to have declared invalid *ab initio*; that the PVHA in turn (also arguably acting *ultra vires*, but perhaps not essential to plaintiffs' case), similarly ignored the express deed restrictions by again "impermissibly" conveying to private parties, defendant "Area A Recipients," and by purporting to make the conveyance with an elimination of the parkland use restriction--another action which the court is asked to find to be void *ab initio*. At the same time, plaintiff appears to be suing the Area A and/or Panorama Property Owners for placing impermissible structures on

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[1]The court is aware of no civil cause of action for "estoppel." The facts relating to this and to the history of the deed restrictions, etc. are matters of evidence which are admissible in trial, but need not, and should not, be included in a Complaint where it is unnecessary and even improper to allege all of the plaintiffs' proposed evidentiary facts. Plaintiffs need not prove their case in the pleading.

Area A and/or to declare that these structures are impermissible. Authority for plaintiffs' *ultra vires* theories and citations to the concomitant "public trust" doctrine is to be found in plaintiffs' Opposition cases including but not limited to the Hermosa Beach, Welwood Library, County of Solano and Big Sur cases

Plaintiffs' prayer for relief has presumably changed now that the mandamus action has concluded. For example, the FAPC seeks to have the court void the settlement agreement whereby the City obtained its deed to area A, but it may be that this will not necessarily continue to be an issue. The efforts of plaintiffs to compel the City to unwind this agreement by mandamus were unsuccessful. Possibly, the plaintiffs could seek to have the Association's agreement voided as a part of a "minority shareholder" type action, but the court is not sure what the plaintiffs intend or need this to accomplish what they seek now, post-mandamus. The City obtained the deed, the means may now be irrelevant, especially if the core issue now being raised as to the City (aside from the issue of enjoining future acts to interfere with the public trust) is whether or not it could convey Area A to a private party. If plaintiff is correct and the City could not do so, then possibly the parties to the settlement agreement will subsequently have to deal among themselves with "their problem" and the fallout from their actions and the assumptions they made in entering into an agreement which was potentially unenforceable or improper, but arguably, that would have nothing to do with regard to the restrictions now before the court, the enforcement thereof and the ownership of Area A. Plaintiffs need to clarify their pleading in this regard if, in fact, any relief is still being sought post-mandamus to try and set aside the MOU or take some other action with regard to it.

Another issue raised in the FAC is whether or not if the deed returns to the City or defaults to the PVHA, whether the City can be enjoined from continuing to allow the alleged encroachments on area A, and/or whether the court can and should order that the encroachments be immediately removed by whoever may be the ultimate owner of Area A. What plaintiffs are seeking in this regard also needs to be clarified. At one time in their third cause of action, plaintiff or plaintiffs were seeking to enjoin the defendant City from passing zoning changes or taking other acts which would affect the restrictions on use and transfer, etc. involved in this case. They still can do so as part of a claim for injunctive and/or other relief under the authority of the case of Save the Welwood Murray

Memorial Library Com., infra, pp.1017--1018 in which the court held that although a court cannot generally enjoin a municipality from issuing a legislative act, when it violates its duties as trustee of a public trust (to wit, the trust imposed by accepting land for public use which is restricted in that manner) by not enforcing the restrictions of the deeds or taking steps which would enable or cause there to be violations of restrictions on such donated property, its acts are *ultra vires*, cannot be deemed legislative in nature, and, accordingly, can be enjoined.

Presumably plaintiffs are or now will be also seeking to have title to the property quieted in the City and/or declared to be in the City (or if the reversionary provision sending it back to the PVHA upon violation of the restrictions comes into play, then in the PVHA) with all of the deed restrictions reaffirmed and intact.

Whatever the plaintiffs are now seeking by way of relief and whatever they may now be contending, they are asked in the Second Amended Complaint which the court is now permitting, to streamline the Second Amended Complaint on these bifurcated civil matters. If the court could sum up the claims in a long paragraph, plaintiffs should not need 27 pages or more.

I. Standing

Issues of standing have been raised, and as to that matter, the court finds that the FAPC needs to be further amended to clearly reflect the bases of plaintiffs' claims of standing. In terms of being able to attack actions by the Palos Verdes Homes Association (PVHA), one possibility is that it is necessary to allege that plaintiffs are "members" of that association because the action they are bringing to set aside what are allegedly *ultra vires* actions of the PVHA is either akin to or in actuality a minority shareholder action. According to the "Protective Restrictions ...Articles of Incorporation and By-Laws of Palos Verdes Homes Association" of which the court takes judicial notice, the restrictions were created so "[t]hat every purchaser in Palos Verdes may be sure when building his home that ...," expressing an intent to benefit every home owner at page 2. At page 5, the document provides that:

> "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."

According to this document, every lot owner, whether the lot is improved by a building or not, is a voting member of the Association, and, as such, in this court's view would have standing to pursue an action such as this against the Association.

However, there is no allegation at the present time of any such standing on behalf of any of the plaintiffs, including the newly added plaintiff Harbison. The FAC/Petition alleges as to him that he is an owner of real property "within the City" and a taxpayer of the City, but it does not allege that he is an owner of a building site covered by the Association Articles, etc. It may be that every property within the City is within the Association coverage, but the court does not know that.

Additionally, as was discussed at the first hearing date on this matter, the identity of the real property in issue that was passed from party to party might be made clearer, perhaps by a diagram coupled with an allegation that it is subject to the deed restrictions in issue with the language of the restrictions relied upon spelled out. But the entire history of Palos Verdes is not necessary.

On the other hand, as to standing, under the public trust doctrine which is usually applied to municipal holdings of restricted properties, if the doctrine can be applied by analogy to the PVHA situation, it may be the case that it is enough to simply allege that one is a member of the public (a PV resident, landowner or not?) who stands to benefit from the enforcement of the restrictions, i.e., the keeping of parkland that the general public may enjoy, in order to establish standing to act. In this case, the area in question, Area A, along with parcels of real property, were initially granted to the PVHA (which in turn conveyed the properties in its care to governmental entities) for the purpose of holding and protecting the land for the public's benefit (with standing as third party beneficiaries to enforce the grant?). Accordingly, just alleging that one is a member of the public which would benefit from the terms of the grant might be enough for standing to attack what the PVHA has done and/or to require it to act otherwise than it has-- possibly without even being an owner of propery of Palos Verdes since the parkland is apparently not restricted to the use of such owners or residents. See, County of Solano v. Hanlery (2007) 155 Cal. App. 4th 566, 576, ftn.5:

> "[T]he municipality owes the public a duty to employ the property in a certain way and...members of the public can proceed in equity to compel the municipality to live up to this part of its governmental obligation."[2]

As to standing to challenge City actions, there is the "taxpayer" basis to sue for violation of park use deed restrictions relied upon as a ground for "standing" in City of Hermosa Beach v. Superior Court (1964) 231 Cal. App.2d 295, 300. In another case, a general association to preserve a library was the plaintiff but there was no discussion as to why this association was deemed to be a proper plaintiff. See, Save the Wellwood Murray Memorial Library Com. V. City Council (1989) 215 Cal. App.3d 1003. In the present case, the plaintiff, Citizens for Enforcement of Parkland Covenants (hereinafter "Citzens") allegedly consists of those who may be residents if not taxpayers and those who apparently may not be, as well as those who may or may not be owners of real property within the Association's purview and who may or may not be "members" of the PVHA. It is not alleged that any of the "Citizens" are taxpayers or property owners, etc. However, if it is enough just to be a member of the public who has an interest as such in the upholding of the deed restrictions in issue, an allegation to this effect made as to the plaintiffs might be enough to plead a proper claim at least with regard to the "standing" question. The court says "might" and "maybe" as to all of the above, because the parties have not completely examined or briefed this issue, and the court is inclined to let the plaintiff do such research and to make such allegations as they may deem to be needed to fill whatever gaps may exist in the allegations necessary to meet "standing" requirements both as to the City and the PVHA and all other defendants in a Second Amended Complaint.

Leave is granted to the plaintiff to amend the Complaint to allege whatever additional facts may be needed to claim a proper standing to bring the action against all defendants and to supply whatever else is needed in this regard per the above.

II. Other Issues Raised by the Association Demurrer

Because of the "hybrid" nature of the FAPC, much of what has been raised by demurrer is addressed to matters germane only to the mandamus petition. Accordingly, the court will not address

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[2]Also see, CCP 526.

those matters here, but the Association has here attempted to have the court try the issue as to what the scope of the Association's discretion, if any, may be by looking to page 30 of Exhibit 1 to the FAC which lists powers of the Association, and to do so in a vacuum. Again, plaintiffs need not set forth their entire case in their Complaint. Having a power does not necessarily entail a right to use that power in a particular way in a given situation. Here, the allegation is that the power was abused and/or that the Association acted outside its powers altogether, and plaintiffs have put before the court in that regard, as noted above, the Articles of the Association which, *inter alia*, recite the duties of the Association to "perpetuate the restrictions." The court does not agree that the attachments to the FAPC are necessarily inconsistent with or contradict the allegations of the body of the FAPC. The court overrules the demurrer, leaving the issue for later determination in trial or by an alternative form of adjudication.

The Association also argues that Area A is not within a parcel that requires a vote of surrounding property owners before a change can be made in restrictions, again resorting to contentions such as, "[i]t is undisputed in this case that the property that is subject of the Amended Petition is not part of Tract 6888." Again, this court will not entertain such an argument on demurrer that reaches outside the record and rests on what the parties may or may not dispute, especially with a Complaint that is so in need of redoing. Plaintiff absent a mandamus claim just needs to plead the ultimate facts necessary with regard to the restrictions, that they were allegedly violated and how, etc. and the court declines at this point in time to attempt to resolve evidentiary issues

The Association also seeks to have the third cause of action for injunctive relief deleted but this is denied. Once the Complaint is properly put together, it well may be that injunctive and/or specific performance relief will or would be justified by the allegations if not required in order to provide full relief on what is alleged.

III. The Various Property Owners' Joint Demurrer

These parties first argue that all matters in the plaintiffs' pleading could and should be covered by the mandate action. This court disagrees. They also argue that this is all about the settlement agreement as if the City adopting the MOU was dispositive. This court again does not agree. The parties to the MOU made a deal and took the risk that what they were doing would not

be challenged or, if challenged, the challenge would not be successful. That challenge is what they are now facing, but the MOU, in this court's view, does not need to be vacated or set aside for the restrictions allegedly tied to Area A 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.

As to nuisance, there is no need for a government entity to declare something to be a nuisance for the tort to be committed as defendants contend. The defendants must look to California law, not the Municipal Code to see what nuisance embraces. This objection is overruled.

Defendants further contend that there is no controversy between the parties properly before the court sufficient to form the basis of an action for declaratory relief. The court's view is that if this case does not present such a case, no case ever will. Moreover, when real property is involved, it is essential that a court step in with declaratory and even ancillary quiet title relief to insure that restrictions on and ownership of land issues are promptly resolved. The matters now before this court do not depend, in this court's view, on the MOU and who were or were not parties to it. The court does concur, however, that when amending, the plaintiffs should be clear as to what sort of relief they are seeking as to each defendant now that the mandamus issue is out of the picture.

The standing issues raised by these defendants have been discussed above, but to clarify, as to the Luglianis, the plaintiffs are *inter alia* seeking to have the deed to these defendants found to be void and the transfer of area A to them vacated and are additionally seeking to have the court require that the City or the Association, if either of them end up with the deed, or whoever holds it in the end, remove whatever has been erected on area A and/or the Panorama property. The rights of these defendants are going to be affected by any such rulings which makes them indispensable (or at the least necessary) parties and they are properly joined.

C E R T I F I C A T E O F M A I L I N G

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Civil Division

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS VS. CITY OF PA	BS142768

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