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Exempt from fees pursuant
to Government Code § 6103

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES—CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS, an
unincorporated association; JOHN
HARBISON, an individual

Plaintiffs and Petitioners,

v.

CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
HOMES ASSOCIATION, a California
corporation,

Defendants and Respondents,

CASE NO. BS142768

**CITY'S MEMORANDUM OF POINTS
AND AUTHORITIES OPPOSING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION OR
BOTH; AND JOINDER IN PORTIONS
OF CO-DEFENDANTS' OPPOSITION,
SEPARATE STATEMENT AND
EVIDENTIARY OBJECTIONS**

[Filed concurrently with Request for Judicial
Notice in Support of Opposition; Declaration of
Sheri Repp-Loadsman]

Date: March 25, 2015
Time: 10:30 a.m.
Dept.: 12

Hon. Barbara A. Meiers

Petition and Complaint Filed: May 13, 2013

ROBERT LUGLIANI and DOLORES 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 and Real Parties in
Interest.

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I. INTRODUCTION & SUMMARY OF ARGUMENT

This lawsuit arises from Plaintiffs' concern over the enforcement of certain private covenants on land conveyed from the private Palos Verdes Homes Association ("Association") to Plaintiffs' neighbor, the Luglianis. The City does not belong in the case. Plaintiffs named the City based on their contention that the City had a mandatory duty to hold the subject property and enforce the private CC&Rs. Plaintiffs' claims sounded in mandate and Plaintiffs' theory was rejected as a matter of law by the Writs and Receivers Department. In 1940, the Association originally granted the subject property to the City subject to a reversionary interest in the event that any of the deed restrictions were violated. In 2012, the City reconveyed the property back to the Association. Indisputably, the City had the legal authority to reconvey the property to the grantor, which had retained a reversionary interest

Nevertheless, in the instant Motion for Summary Judgment ("Motion"), Plaintiffs focus their efforts on the 2012 deeds and glibly claim that the September 2012 deeds violate the 1940 deed restrictions. Plaintiffs ignore the fact that these deeds are separate documents: the Motion offers no facts or valid argument that show that the City's 2012 quitclaim deed to the Association is in any way illegal. Paradoxically, if, as Plaintiffs contend, the City's quitclaim deed violated the 1940 deed, the only remedy under the terms of the deed – and as pled in the SAC – would be for the Association to exercise its power of termination to revert the property back to itself.

Further, the Motion misapplies the "public trust" doctrine in this case because the City simply returned the property back to the original grantor. The public trust doctrine governs use, not ownership, of park property. In any event, no public trust is created by a conditional grant where grantor retained a reversionary interest. In essence, Plaintiffs claim, without support, that the City must be compelled to own the property forever. In addition, Plaintiffs claim that the City is somehow "estopped" from raising its arguments by the 1949 case *Roberts v. Palos Verdes Estates* is simply misplaced. *Roberts* was decided on distinctly

1 different issues and facts. The relief sought is unavailable and, accordingly, the City
2 respectfully requests that Plaintiffs' Motion be denied.

3
4 **II. JOINDER IN CO-DEFENDANTS' FACTS, STANDARD OF REVIEW,**
5 **SEPARATE STATEMENT OF UNDISPUTED FACTS, OPPOSITION TO THE**
6 **FIRST CAUSE OF ACTION (ISSUES 1-4), AND EVIDENTIARY**
7 **OBJECTIONS**

8 The City joins in sections II (Factual Background) and III (Standard of Review) of the
9 Opposition to the Motion for Summary Judgment, the entirety of the Joint Evidentiary
10 Objections to the Declaration of John Harbison, and the entirety of the Separate Statement of
11 Disputed and Undisputed Additional Material Facts in Opposition to Plaintiffs' Motion for
12 Summary Judgment or Summary Adjudication or Both filed by Defendants Robert Lugliani
13 and Dolores A. Lugliani, as co-trustees of The Lugliani Trust, Thomas J. Lieb, Trustee, The
14 Via Panorama Trust, and Palos Verdes Homes Association (collectively, co-defendants).
15 The City also joins in section IV (Argument) of the co-defendants' Opposition as it pertains
16 to the validity of the transfer of Area "A" to the Association and the affirmative defense of
17 failure to join an indispensable party. The City raises only those arguments that are unique
18 to City in the first cause of action, below.

19 **III. ARGUMENT**

20 **A. Because the 1940 Deed Restrictions Govern Use, not Ownership, the 2012**
21 **Deed from the City to the Association does not Violate the Terms of the**
22 **Deed (Issues Nos. 1 – 4).**

23 Declaratory relief requires an *actual* controversy between the parties. Not one of the
24 restrictions stated in the Motion is supported by any legal theory that would give rise to a
25 justiciable controversy involving the City. Plaintiffs' theory appears to be that the 2012 deed
26 from the City to the Association (2012 City Deed) permits the grantee to undertake actions
27 that are not authorized by the 1940 deeds. Assuming, *arguendo*, that the 1940 deeds are still
28 controlling, the 2012 City Deed simply limits the grantee (here, the Association) with respect
to potential improvements. This limitation is one of several sources of limitations on use of
property including City zoning laws and the CC&R's administered by the Association.

1 **The Forever Parks restriction** affects the use of the property not its ownership. The
2 reconveyance of Area A from the City to the Association affected only ownership.
3 Plaintiffs' reliance on *Save the Welwood Murray Memorial Library Com. v. City Council*
4 (1989) 215 Cal.App.3d 1003 ("*Welwood*") is misplaced here. *Welwood* involved a city
5 affirmatively trying to *use* property for something other than library purposes - ultimately by
6 granting a third party developer an easement over the property for commercial development
7 uses inconsistent with the purposes of the grant. *Id.* at 1005-8. *Welwood* has no application
8 to this case. The 2012 City Deed is not a use of property; it is simply a change in ownership,
9 the return of the property to the original grantor – an action specifically approved by
10 *Welwood*. See *id.* at 1017 ("An injunction will not lie to prevent City from making an
11 express legislative determination that it would be in the best interests of City and its citizens
12 to cease using the property for library purposes, and to allow the property to revert to the
13 grantors' heirs").

14 **The No Structures restriction** has no application to the City because the SAC does
15 not allege (nor could it) that the City has constructed structures on the property. To the
16 extent structures violate the deed restrictions, those violations are the responsibility of the
17 property owner and the City is not precluded from reconveying property to the Association
18 that includes unpermitted structures. In fact, the SAC specifically alleges that the effect of
19 unpermitted structures or any violation of a restriction is "to trigger the reversion of title to
20 AREA A back to the ASSOCIATION." SAC¶36(b). Nevertheless, 2012 quitclaim deed
21 only authorizes that which is allowed by the City pursuant to its police power.

22 **No Sale or Conveyance "Except to a Body Suitably Constituted by Law to Take,**
23 **Hold, Maintain and Regulate Public Parks" restriction:** is not at issue because the SAC
24 specifically alleges that Declaration 25 charges the Association with the duty to "maintain
25 the parks" of the City. SAC¶14(i). The SAC alleges the Association is a qualified recipient.
26 Plaintiffs disingenuously now attempt to avoid the unqualified admission in the SAC that the
27 "land use restrictions established by Declaration Nos. 1 and 25 remain in effect today"
28 [SAC¶14(ii); SS 12] by claiming in the SS that the Association "is no longer a body that

1 takes, holds and maintains and regulates public parks SS 31. Plaintiffs' admission cannot
2 now be controverted.¹ See *Heater v. Southwood Psychiatric Ctr.*, supra, 42 Cal.App.4th at
3 1079–80. Further, their position ignores the fundamental rule that the provisions of the deed
4 itself control. Plaintiffs cannot cherry pick those provisions in the deeds that suit their
5 purpose and disregard the rest. Whether or not the Association currently holds any parks is
6 irrelevant. The 1923 declaration – which the SAC admits is still binding – specifically
7 charges the Association with the duty to maintain parks.

8 **Improve Access and Views restriction** affects the use and improvement of the
9 property. The reconveyance of Area A to the Association affected only ownership. Further,
10 as detailed in Plaintiffs' argument [Motion, pg. 13], improvements are allowed with the
11 written approval of the Association and a permit from the City. Despite Plaintiffs'
12 contention, the City's quitclaim deed does not *authorize* the contested improvements. It
13 simply sets forth the procedure (that would be required in any event under the PVEMC) to
14 permit certain items.

15 Plaintiffs have not set forth facts to establish an actual, justiciable controversy with
16 the City over whether and which deed restrictions apply to Area A because the City does not
17 own Area A and the private deed restrictions are not enforced by the government. These
18 restrictions identified in its Motion demonstrate that the issues in this case are between the
19 Plaintiffs and the property owner. Moreover, Plaintiffs offer absolutely no fact and offer no
20 viable legal theory to suggest that there was any infirmity in the City's reconveyance of Area
21 A to the grantor.

22 ///

23 ///

24 ///

25
26
27 ¹ In fact, Plaintiffs have specifically admitted in deposition that the transfer from the City back to the
28 Association was permissible under the 1940 deeds. See Declaration of Brant Dveirin, Exhibit B
(Harbison Depo., pg. 45, lns. 19-25; 46:1-6.)

1 **B. Plaintiffs Are Not Entitled to Summary Adjudication on Their Waste of**
2 **Public Funds/*Ultra Vires* Cause of Action Against the City.**

3 **1. The City did Not Violate the “Public Trust” by Quitclaiming Area**
4 **A Back to the Association (Issue No. 5).**

5 The Motion seeks summary adjudication as to the waste of public funds/*ultra vires*
6 cause of action based on the 2012 quitclaim deed from the City back to the Association. The
7 second cause of action for “waste of public funds” is based on two allegedly *ultra vires* acts:
8 (1) “transfer of public parkland to a private party was an *ultra vires* act because of land use
9 restrictions for that land. (2AC, ¶43)” and (2) “the City’s ongoing attempts to create a new
10 ‘open space, privately owned’ zoning district solely for the benefit of the Luglianis is also
11 *ultra vires* (2AC, ¶43).” Plaintiffs do not now seek summary adjudication as to this latter
12 theory.

13 With respect to the transfer of ownership, the SAC itself alleges facts to establish that
14 the applicable restrictions not only allowed, but under some circumstances provided for the
15 reconveyance of Area A from the City to the Association. The SAC specifically alleges that
16 Declaration 25 of the Association’s CC&Rs charges the Association with the duty to
17 “maintain the parks” of the City and restricts sale or conveyance of the Property “except to a
18 body suitably constituted by law to take, hold, maintain and regulate public parks.” SAC
19 ¶14(i). Thus, Plaintiffs admit that that the Association is a qualified recipient of Area A and
20 offer no basis to conclude that the City’s reconveyance of Area A was inconsistent with the
21 land use restrictions.

22 As a matter of law, neither the transfer of Area A to the Association nor the
23 consideration of a rezone application constitutes an *ultra vires* act within the meaning of the
24 statute prohibiting the waste of public funds. Plaintiffs’ reliance on authorities involving the
25 misuse of public property is of no import. The SAC does not allege that the City is currently
26 using Area A for any purpose inconsistent with the deed restrictions, nor could it. The City
27 is not using the property at all. Instead, Plaintiffs attempt to state a claim based on the fact
28 that the City is simply not owning Area A. In point of fact, the case relied upon most heavily

1 by Plaintiff throughout this litigation for their “ultra vires” argument - *Welwood* -
2 specifically states that a city’s decision to allow property to revert to the grantor cannot be
3 “ultra vires”. *Save the Welwood Murray Memorial Library Com. v. City Council, supra*, 215
4 Cal.App.3d at 1017.

5 The cases cited by Plaintiffs are not on point here. All involved public entities
6 attempting to actually use property that they currently owned in a manner inconsistent with
7 terms of the dedication to the general public. See *County of Solano v. Handlery* (2007) 155
8 Cal.App.4th 566 (county sought to make alternative use of land that had been quitclaimed to
9 it for public fairground purposes with no reversionary interest); *Big Sur Properties v. Mott*
10 (1976) 62 Cal.App.3d 99 (state statute authorizing rights-of-way for private access across
11 public parkland under certain circumstances is not applicable to property that has been
12 donated to the state for exclusive use as a public park; no reversionary interest); *City of*
13 *Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295 (holding that a taxpayer had
14 standing to maintain an action to prevent the construction of a road over property restricted
15 from such use and dedicated “as a public pleasure ground”); *Save the Welwood Murray*
16 *Memorial Library Com. v. City Council, supra*, 215 Cal.App.3d 1003 (city could not
17 commercially develop property dedicated to it to “continue and forever maintain the Palm
18 Springs Free Public Library”); *Roberts v. City of Palos Verdes Estates* (1949) 93 Cal. App.
19 2d 545 (action challenging interpretation of deed restrictions placed on park land regarding
20 placement of buildings for park purposes); *Griffith v. Dep’t of Pub. Works* (1956) 141 Cal.
21 App.2d 376 (action to enjoin City, that accepted dedication of land purely for park purposes,
22 from using portion of it as a freeway).

23 None of the cases cited by Plaintiffs stand for the proposition that the City cannot
24 transfer deed restricted property back to the grantor. The circumstances under which a
25 public entity’s use of property in contravention of deed restrictions may be an *ultra vires* act
26 is not before this court. Suffice it to say that, *where the grantor does not retain a right of*
27
28

1 reversion, courts may imply a public trust to assure the wishes of the grantor.² The deed at
2 issue here, however, includes a right of reversion. But more to the point, this lawsuit does
3 not challenge the City's use of the property; it challenges its right to return the property to
4 the original grantor.

5 Plaintiffs have not cited authority in support of their claims. The conveyance of Area
6 A by the City to the grantor Association is not illegal conduct that can form the basis of a
7 CCP § 526a claim for waste of public funds. The City is authorized by law to control and
8 dispose of real property for the common benefit. Gov't Code § 37350. The legislative body
9 acted well within its authority.

10 **2. Collateral Estoppel Is Inapplicable: the Issue Decided by *Roberts v.***
11 ***City Of Palos Verses Estates* in 1949 Is Completely Different from**
12 **that Raised Here (Issue No. 6).**

13 In order for Plaintiffs to prevail on their collateral estoppel claim, the issue (1) must
14 be identical to that decided in the former proceeding, (2) must have been actually litigated in
15 the former proceeding, (3) must have been necessarily decided in the former proceeding, (4)
16 the decision must have been final and on the merits, and (5) the party against whom
17 preclusion is sought must be the same as, or in privity with, the party in the former
18 proceeding. See, e.g., *Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc.* (2014) 231 Cal.
19 App.4th 134, 179.

20 Here, despite Plaintiffs' improper attempt to characterize this as an undisputed "fact"
21 [see SS 112], the issue actually decided in *Roberts* bears no resemblance to that at issue here.
22 In *Roberts*, the issue was whether or not the City could use parkland in a certain manner –
23 i.e., the erection of building for the storage and maintenance of City trucks used for various
24 purposes. The deed at issue there expressly provided for some discretion by the City in
25

26 ²*Welwood, supra*, (1989) 215 Cal.App.3d 1003, based its holding in part on Code of Civil Procedure
27 section 526(a)(7) which allows an injunction where the obligation arises from a "trust" as an
28 exception to Civil Code section 3423 prohibition against enjoining legislative acts. However,
Welwood was decided before *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 125-126, which
held that a grant of property subject to a reversionary interest does not create a "trust".

1 determining whether the use was incidental to the use of the property for park purposes. See
2 *Roberts v. City of Palos Verdes Estates, supra*, 93 Cal.App.2d 545. Further, *Roberts* was not
3 actually decided on the merits as presented by Plaintiff – instead, it was remanded back to
4 the trial court to determine if the buildings constructed by the City were in fact permissible
5 under the deed. *Id.* at 548. Here, of course, the issue is not the City’s use of property – it is
6 the City’s decision to quitclaim the property back to the original grantor. As such, the City is
7 in no way collaterally estopped under *Roberts* from litigating this issue.

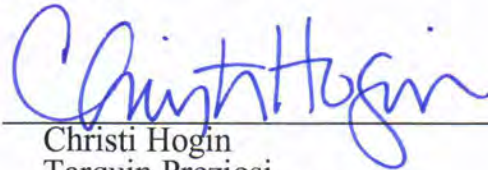
8
9 **IV. CONCLUSION**

10 For the above reasons, the City requests that the Plaintiffs’ Motion for Summary
11 Judgment or, in the alternative, Summary Adjudication as to Issues Nos. 1 through 6,
12 inclusive, be denied.

13 Dated: May 14, 2015

Respectfully submitted,

14
15
16 By:



Christi Hogin
Tarquin Preziosi
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Attorneys for Defendant/Respondent

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1230 Rosecrans Avenue, Suite 110,
Manhattan Beach, CA 90266.

5 On May 15, 2015, I served the foregoing documents described as:

6 **CITY'S MEMORANDUM OF POINTS AND AUTHORITIES OPPOSING**
7 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR SUMMARY**
8 **ADJUDICATION OR BOTH; AND JOINDER IN PORTIONS OF CO-**
9 **DEFENDANTS' OPPOSITION, SEPARATE STATEMENT AND EVIDENTIARY**
10 **OBJECTIONS**

11 on the interested party or parties in this action by placing the original thereof enclosed in sealed
12 envelopes with fully prepaid postage thereon and addressed as follows:

13 *PLEASE SEE SERVICE LIST ATTACHED*

- 14 ☐ **VIA EMAIL.** I caused such document as described above, to be transmitted via E-Mail
15 to the offices of the addressee(s).
- 16 ☐ **VIA FACSIMILE.** I caused such document to be transmitted via facsimile to the offices
17 of the addressee(s).
- 18 ☐ **VIA OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package
19 provided by an overnight delivery carrier and addressed to the person(s) at the address(es)
20 stated above. I placed the envelope or package for collection and overnight delivery at a
21 regularly utilized drop box of the overnight delivery carrier.
- 22 ☒ **VIA U.S.MAIL.** I enclosed the above described documents in a sealed envelope or
23 package addressed to the person(s) listed above or on the attached; caused such envelope
24 with postage thereon fully prepared to be placed in the United States mail at Los Angeles,
25 California.

26 *I am readily familiar with the Jenkins & Hugin, LLP's practice of collection and processing correspondence for
27 outgoing mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with
28 postage thereon prepaid at Manhattan Beach, California, in the ordinary course of business. I am aware that
on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.*

- 29 ☒ **STATE.** I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.
- 31 ☐ **FEDERAL.** I declare that I am employed in the office of a member of the Bar of this
32 Court at whose direction the service is made.

33 Executed this 15th day of May, 2015, at Manhattan Beach, California.

34 Wendy Hoffman
35 WENDY HOFFMAN

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