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11 *LIEB, Trustee, THE VIA PANORAMA TRUST*

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13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
14 CENTRAL DISTRICT - STANLEY MOSK COURTHOUSE

15 CITIZENS FOR ENFORCEMENT OF  
16 PARKLAND COVENANTS and JOHN A.  
HARBISON,

17 Plaintiffs,

18 vs.

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

24 Defendants.

CASE NO. BS142768

*Assigned to Hon. Barbara A. Meiers, Dept. 12*

**DEFENDANT PALOS VERDES HOMES  
ASSOCIATION; ROBERT LUGLIANI  
AND DOLORES A. LUGLIANI, AS CO-  
TRUSTEES OF THE LUGLIANI TRUST;  
AND THOMAS J. LIEB, TRUSTEE, THE  
VIA PANORAMA TRUST U/DO MAY 2,  
2012'S JOINT REPLY TO PLAINTIFFS'  
OPPOSITION TO MOTION FOR  
JUDGMENT ON THE PLEADINGS,  
BASED ON THE OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT  
FILED ON MAY15, 2015**

DATE: June 4, 2015  
TIME: 9:30 a.m.  
DEPT.: 12

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION/ARGUMENT

**The Opposition replies to the *wrong* motion.** It is a repeat—a cut and paste job—of Plaintiffs’ Opposition to the Defendant City of Palos Verdes Estates’ (“City”) Cross-Motion for Summary Judgment. It is literally word for word, except for two new paragraphs in the Introduction.

The City moved in its Cross Motion for Summary Judgment on the Second Amended Complaint’s (SAC) Second Cause of Action for Waste of Public Funds/Ultra Vires Actions.

The Joint Motion for Judgment on the Pleadings, however, was not filed by the City. Rather, it was filed jointly by Defendants Palos Verdes Homes Association (“Association) and Robert and Delores Lugliani (“Luglianis”). The Association’s and Luglianis’ Joint Motion for Judgment on the Pleadings, on its face, is to the SAC’s First Cause of Action for Declaratory Relief – the Association and Luglianis move for judgment on the pleadings “AS TO THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF.”

Thus, the Opposition is completely non-responsive and should not be considered by the Court.

**The Joint Motion for Judgment on The Pleadings is not procedurally infirm.** The Joint Motion incorporates by express reference the arguments from the Association’s and the Luglianis’ Joint Opposition to the Motion for Summary Judgment. The Joint Opposition contains all of the necessary sections and legal authorities for the motion. Plaintiffs cite no rule of court prohibiting incorporation of pleadings or arguments contained therein. Incorporation was done to avoid duplication and conserve resources and because for the same reasons that the Plaintiffs’ Motion for Summary Judgment should be denied, the Association and the Luglianis are entitled to Judgment as to the First Cause of Action.

**Judgment as to The First Cause of Action should be granted.** Plaintiff John Harbison and the other homeowners are bound to the Judgment in the prior School District Litigation and the resulting Memorandum of Understanding/ Settlement Agreement, under the Davis-Stirling Act

1 and related case law, as well as under general corporate law principles. Those members of  
2 Plaintiff Citizens for Enforcement of Parkland Covenants, who are not homeowners, have no  
3 standing to challenge the deed restrictions. For those reasons alone, the Association and the  
4 Luglianis are entitled to Judgment on the First Cause of Action. Furthermore, the Association's  
5 decision in settling the School District Litigation and entering into the MOU are entitled to  
6 deference under the well established Business Judgment Rule. Finally, review of all the relevant  
7 covenants, restrictions and deeds, not just the 1940 Deeds that are the subject of Plaintiffs' narrow  
8 focus, and case law demonstrates that the restrictions in those Deeds terminated by merger of that  
9 even if they survived the conveyance of the subject property (Area A) to the Association, the  
10 Association has the power to interpret the restrictions which is conclusive. For the same reasons,  
11 the Association also has the power to transfer Area A to the Luglianis, who under the 2012 Deeds  
12 must preserve an open space easement, which is qualified only by a limited right to seek City  
13 approval of certain narrowly defined structures.

14 **II.**

15 **CONCLUSION**

16 For these reasons, the Motion for Judgment on the Pleadings should be granted.

17 DATED: May 27, 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

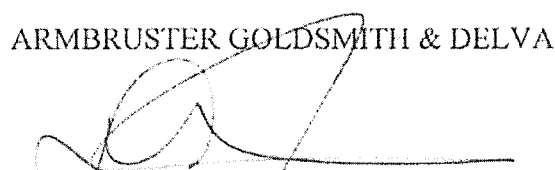
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\_\_\_\_\_  
BRANT H. DVEIRIN, ESQ.  
Attorneys for Defendant,  
PALOS VERDES HOMES ASSOCIATION

22 DATED: May 27, 2015

ARMBRUSTER GOLDSMITH & DELVAC LLP

23  
24  
25 By:

  
\_\_\_\_\_  
DAMON MAMALAKIS, ESQ.  
Attorneys for Defendants,  
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

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *Citizens for Enforcement of Parkland Covenants, et al.*

3 v.

4 *City of Palos Verdes Estates, et al.*

5 *File No.: 50013.1840*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 At the time of service, I was over 18 years of age and not a party to the action. My  
8 business address is 633 West 5<sup>th</sup> Street, Suite 4000, Los Angeles, CA 90071.

9 On the below date, I served the following document(s) described as: **DEFENDANT  
10 PALOS VERDES HOMES ASSOCIATION; ROBERT LUGLIANI AND DOLORES A.  
11 LUGLIANI, AS CO-TRUSTEES OF THE LUGLIANI TRUST; AND THOMAS J. LIEB,  
12 TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012'S JOINT REPLY TO  
13 PLAINTIFFS' OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS,  
14 BASED ON THE OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED ON  
15 MAY15, 2015** on the following persons at the following addresses (including fax numbers and e-  
16 mail addresses, if applicable):

17 **SEE ATTACHED SERVICE LIST**

18  **(BY U.S. MAIL)** I enclosed the above-stated document(s) in a sealed envelope or package  
19 addressed to the person(s) at the address(es) listed by placing the envelope or package for collection  
20 and mailing, following our ordinary business practices. I am readily familiar with the firm's  
21 practice for collection and processing correspondence for mailing. Under that practice, on the same  
22 day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of  
23 business with the U.S. Postal Service, in a sealed envelope of package with the postage fully prepaid  
24 thereon. I am aware that on motion of the party served, service is presumed invalid if postal  
25 cancellation date or postage meter date is more than one day after date of deposit for mailing in  
26 affidavit.

27  **(VIA ELECTRONIC MAIL)** I caused a **courtesy copy** of the above-stated document(s) to  
28 be sent to the person(s) at the e-mail address(es) listed. I did not receive, within a reasonable time  
after the transmission, any electronic message or other indication that the transmission was  
unsuccessful.

**(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
provided by an overnight delivery carrier and addressed to the persons at the addresses listed above.  
I placed the envelope or package for collection and delivery at an office or a regularly utilized drop  
box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Executed on **May 27, 2015**, at Los Angeles, California.

  
DONNA L. MATA

**SERVICE LIST**

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
File No.: 50013.1840

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