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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC., a California non-
profit corporation; et al.,

Plaintiffs,

vs.

CITY OF SAN DIEGO; DE ANZA
HARBOR RESORT AND GOLF, LLC, a
California limited liability company; et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No.: GIC 821191

ORDER ON MATTERS UNDER
SUBMISSION BY THE COURT ON
MARCH 19, 2007

The Court having read and considered the pleadings filed by the respective parties and having heard oral argument hereby grants in part and denies in part the plaintiffs' motion for summary adjudication of issues as follows:

1. Defendant City of San Diego's evidentiary objections are addressed in the proposed Order submitted by the City of San Diego in opposition to plaintiffs' motion for summary adjudication.
2. The evidence before the Court shows that:

- 1 a. On June 29, 1945 State Park Commission granted the property
2 formerly known as Mission Bay tidelands to the City of San Diego to be
3 held in trust and that “at all times be accessible and subject to the use
4 and enjoyment of all of the citizens of the State of California.”
- 5 b. In May 1951 City and Marian Fesler Purdy and Lila C. Witcher entered
6 into 50 year Master Ground Lease with a commencement date of
7 11/24/53 an expiration date of 11/23/03. This Master Ground Lease
8 provided for use as a “tourist and trailer park area”. [Pls’ Ex. 63, Ex.
9 5]
- 10 c. On May 1, 1954 Purdy and Witcher assigned the Master Ground
11 Lease to De Anza Harbor, Inc. (DHI) The Master Ground Lease
12 required the lessee within five years to “complete and have ready for
13 occupancy” 500 trailer units. The MGL also provided that “the lessee
14 agrees that the leased premises shall be used only and exclusively for
15 the development and operation of a tourist and trailer park area with
16 the accompanying facilities, businesses and concessions which may
17 be necessary or desirable in the opinion of the lessee...including those
18 listed in paragraph “Fourth” of this lease. Whenever the lessee shall
19 desire to install or operate any facilities, businesses and concessions
20 other than those already listed in paragraph “Fourth” of this lease, they
21 shall obtain the approval, in writing, of the City Manager of the lessor.”.
22 Pls’ Exhibit 5 is a copy of a City document which describes the purpose
23 of the Master Ground Lease as “Tourist & Trailer Park: Total
24 Constructed Units 522 plus 160 to be constructed. 126 Vacation Units;
25 12 Transient Units; 384 permanent units; 160 permanent units to be
26 constructed by 6/15/63.” The City was to be paid a certain percentage
27 of the revenues generated by trailer rentals, store and beauty shop
28 operations, slip and boat rentals, gas and oil charges. DHI assigned

1 the lease to De Anza Mobile Estates who in turn assigned the lease to
2 De Anza Harbor Resort and Golf (DHRG), the entity that operated the
3 Park up until 11/23/03 [Pls' Ex. 63 – Master Ground Lease and
4 amendments; Ex 72 – Gelfand deposition p. 19-22, 52:14-18, 68:17-
5 19, 69:15-17, 81:9-12, 101:13-25, 102:1, 12-16 103:2-5, 10-14,
6 131:18-24]

7 d. On January 5, 1970 City and ground lessee entered into the Ninth
8 Amendment to the Master Lease which provided in part that the
9 “lessee shall submit to the City Manager a plan for the redevelopment
10 of said premises which shall include new uses for said premises
11 compatible with the purposes of Mission Bay Park and the highest and
12 best use of the real property”. If the Lessee was unable to submit a
13 redevelopment plan within one year, the “rental requirement of 5% on
14 gross income from trailer park rentals as specified in Section 4th hereof
15 shall be increased to 20% of said gross income immediately and
16 automatically...” [Pls' Ex. 6 – 9th Amendment]

17 e. In 1978 Legislature enacts MRL.

18 f. In 1980 State Lands Commission wrote to City Attorney “It is the
19 opinion of the State Lands Commission staff, taking into consideration
20 the facts of the particular situation, that a phase-out of the residential
21 use of the tide and submerged lands held in trust by the City of San
22 Diego in Mission Bay is in the best interest of all parties involved...At
23 the time the original lease was entered into, trailer ‘parks’ were
24 normally places to “park” trailers for limited (vacation) periods and were
25 towed behind the owners’ own vehicles. The evolution of De Anza
26 from a trailer park for the transient-public into a permanent-type
27 residential use is understandable but unacceptable on lands dedicated
28 to public use.”

- 1 g. On June 8, 1981 the City Council passed a resolution providing for the
2 redevelopment and closure of the mobilehome park. [Pls' Ex. 7]
- 3 h. In 1981 Kapiloff Legislation was passed by the Calif. Legislature which
4 allowed for (1) public access to the Property to the maximum extent
5 possible; (2) that the mobilehome park leases cease as of 11/23/03
6 and that thereafter the Property be used for park and recreational
7 purposes; (3) that all Property residents receive notice of the Kapiloff
8 Legislation (4) and that the City by February 1, 1982 concur in the
9 legislation. Section 1(b) through (f) of AB 447 provide in part that, "The
10 described lands were intended by the Legislature to be used for public
11 recreation and public recreational support facilities, which uses could
12 encompass transient-type guest housing. However, the described
13 lands have in fact been developed with permanent sites for
14 mobilehomes which can no longer be considered public guest housing
15 facilities....In balancing the hardship of relocating tenants with current
16 public needs for expanded recreational lands on Mission Bay sufficient
17 lands are available or can be made available for recreational purposes
18 on Mission Bay until the year 2003. In view of the foregoing, tenants
19 should not be forced by reason of their residential use of the described
20 lands, to relocate outside those lands before November 23, 2003...."
21 Thus, the State allowed for this nonconforming use of public
22 recreational property until November 23, 2003 where upon the property
23 was to be changed into public recreational property. [Pls' Ex. 13]
- 24 i. On April 16, 1981 City Manager in Report No. 81-160 regarding AB
25 447/De Anza Trailer Harbor estimated relocation costs for the Park's
26 residents to be approximately \$7 million. [Pls' Ex. 10]
- 27 j. On January 22, 1982 City Manager's Report 81-476 regarding the
28 Proposed Amendment with De Anza Trailer Harbor recommended in

1 part the execution of the 10th Amendment to the lease agreement. The
2 10th Amendment would increase the rental rate and “allow De Anza to
3 submit a plan for development of a hotel on the area of the leasehold
4 not utilized by mobile homes....” This plan “would generate revenues
5 to the City on the order of \$50-\$60 million by the year 2003”. [Pls’ Ex.
6 11]

7 k. On January 25, 1982 City adopted State’s findings via Resolution R-
8 255718 which in turn resulted in the 10th Amendment to the Master
9 Ground Lease. [Pls’ Ex. 12]

10 l. In August 1982 the City sent out Notices to Tenants at De Anza Harbor
11 Resort providing each tenant with a copy of the Kapiloff Legislation.
12 Notwithstanding the provisions of the MRL prohibiting contractual
13 waiver of the protections of the MRL, the City notified the tenants that
14 the 10th Amendment to the Lease provided in part that “all present and
15 future occupants of mobile home spaces...shall not be entitled to and
16 may not claim: a. Any relocation allowances....by reason of, or arising
17 out of, the provisions of the said Assembly Bill 447 or by virtue of any
18 action or inaction of Lessee or Lessor pursuant to said Bill...The date
19 of expiration of the basic lease is November 23, 2003,....under no
20 circumstances shall any occupant’s term be extended beyond
21 November 23, 2003...” [Pls’ Ex. 14 – copy of the Notice]

22 m. In September 1989 residents entered into long term rental agreements
23 (“LTRAs”) [Pls’ Ex. 16] These agreements provided that they were
24 expressly governed by the MRL and limited relocation benefits only if
25 the City approved DHRG’s hotel redevelopment plan. “De Anza and/or
26 The City of San Diego will not provide homeowner,....permitted
27 sublessees,....any additional benefits when the term of this agreement
28 expires other than as provided in Article 20. It is understood that any

1 benefits as provided in Article 20 are received in full satisfaction of any
2 relocation costs and relocation costs advances, and homeowner does
3 hereby agree that such compensation benefits are fair, proper and
4 equitable under the provisions of Calif. Govt. Code 65863.7, and all
5 related benefit compensation statutes.” The LTRAs also provided that
6 Homeowner now has a month-to-month tenancy or a one-year lease
7 as a subtenant of De Anza. Homeowner’s tenancy will terminate no
8 later than November 23, 2003. Homeowner hereby is given notice that
9 De Anza intends to close the park on November 23, 2003. Subject to
10 this Agreement, De Anza is giving up its right to close the park after
11 giving one year’s notice, and is instead giving in excess of fifteen (15)
12 years notice.....Homeowner acknowledges that the current use of the
13 Community by De Anza and Homeowner is inconsistent with the
14 purposes of the trust for the lands upon which the community is
15 located as stated in the statutes of California 1945, Chapter 142. The
16 California Legislature, however, passed Assembly Bill No. 447,
17 Chapter 1008 in 1981....to allow De Ana to continue the present use of
18 the land until November 23, 2003.” [Πs’ Ex. 16 p. 4 sections 5 and 8,
19 p. 14, Article 8, pp. 18-28, Articles 17-20 and Special Conditions
20 Precedent]

- 21 n. In 1989 City Council passed Resolution No. R-274455 which formally
22 opposed Senate Bill 1256 allowing the City to extend the ground lease
23 for an additional 50 years. [Πs’ Ex. 69]
- 24 o. In 1997 City exempted the closure of De Anza Cove from Mobilehome
25 Park Overlay Zone, S.D. Muni Code §101.1002(A)(9) which required a
26 relocation plan that evaluates the impact of displacement on all
27 residents. [Πs’ Ex. 24 – SD Muni Code §143.0615(b); Πs’ Ex. 17 and
28 Ex. 25 – SD Muni Code §143.0610]

- 1 p. On July 27, 1999 City and DHRG entered into a Memorandum of
2 Understanding wherein DHRG would be able to negotiate with the City
3 regarding potential redevelopment of De Anza Cove. [Pls' Ex. 27]
4 DHRG advised the City that a tenant impact report was advisable and
5 offered to prepare and pay for the report. The City said no. [Pls' Ex.
6 72 – Gelfand Deposition 77:12-25, 78:1, 82:22-84:12]
- 7 q. On November 15, 2002 Michael D. Gelfand, President of Terra Vista
8 Management, Inc. sent notice to each Park resident reaffirming the
9 “legally mandated need to discontinue the residential use of Harbor
10 Resort on November 23, 2003” and stating that “Under the
11 circumstances present here, Management believes the expiration of
12 Harbor Resort’s ground lease with the City and the expiration of you
13 LTRA do not constitute a closure of the mobilehome park as defined by
14 California law. Furthermore, Management is not proposing a change
15 in use or closure of the mobilehome park and does not intend to
16 prepare a tenant impact report as might otherwise be required if there
17 was a change in use or closure....” [Pls' Ex. 33]
- 18 r. On May 6, 2003 DHRG notified the City and the park residents that
19 DHRG had abandoned its efforts to develop a hotel. The MOU expired
20 on 5/23/03. [Pls' Ex. 34 – Supplemental Notice Regarding Harbor
21 Resort’s Discontinuance as a Mobile Home Park sent to each resident]
- 22 s. On September 15, 2003 a Notice of Termination of Tenancy was sent
23 to each resident once again informing the residents that “DHRG will
24 not be renewing your LTRA or you mobile home tenancy after the
25 expiration of the ground lease and your LTRA on November 23,
26 2003...DHRG’s ground lease to operate the property as a mobile
27 home park will expire on November 23, 2003, your LTRA will expire on
28 that date, and the use and operation of the property as a mobile home

1 park cannot continue thereafter under current applicable State and City
2 law.” [Pls’ Ex. 35]

3 t. On October 22, 2003 City’s Director of Real Estate Assets presented
4 the City’s “Transition Plan” to the park’s residents. [Lewan Dec ¶ 4;
5 Abbit Dec ¶ 9]

6 u. The City and various owners and occupants of the Park entered into
7 settlement agreements regarding the rights and obligations of the
8 parties under the MRL.

9 The City has the right to close the Park at the expiration of the Master Ground
10 Lease and pursuant the Kapiloff Bill to change the use of the property. Plaintiffs’
11 contention that the expiration of the Master Ground Lease and the Kapiloff Bill are not
12 valid reasons authorized under CC §798.56 for Park closure is without merit. Likewise
13 the City’s position that this is a simple expiration of lease and that the City did not
14 terminate the leases or close the Park also lacks merit. Clearly, the decision to permit
15 the Park to remain open after the Kapiloff Bill and to close the Park in 2003 was made
16 by the City on January 25, 1982 when the City adopted Resolution R-255718. The
17 question is whether the termination notices issued to owners and occupants complied
18 with CC §798.56. They did not as subsection (h) requires that the tenant impact report
19 “shall be given to the homeowners or residents at the same time that notice is
20 required....”. None of the notices were accompanied by the mandatory report.
21
22

23 Accordingly, the Court finds no triable issue of material fact remains as to the
24 following issues and hereby grants plaintiffs’ motion for summary adjudication of the
25 following issues:
26

- 27 1. “De Anza Cove is a mobilehome park and the Mobilehome Residency Law
28 (Civil Code §§ 798 et seq, Gov’t Code §§ 65863.7-65863.8) applies in full to

1 De Anza Cove and the City of San Diego”;

- 2 2. “The City of San Diego is under a mandatory duty to comply with the
3 Mobilehome Residency Law, including but not limited to Civil Code
4 §798.56(g)-(h) and Gov’t Code §65863.7, which regulate closure of De Anza
5 Cove, the timing and content of Notices to residents, and tenant-impact-
6 reporting and relocation assistance requirements”;
- 7
- 8 3. “The City violated the Mobilehome Residency Law, Civil Code §798.56(g)-(h)
9 and Gov’t Code §65863.7 by failing to prepare a tenant impact report and
10 serve lawful Notices that complied with the MRL’s timing and content
11 requirements”.
- 12

13 The Court hereby denies plaintiffs’ motion for summary adjudication of the
14 following issues:

- 15
- 16 1. “The protections afforded by the Mobilehome Residence Residency Law
17 cannot be waived by contract and all such purported waivers in the City’s
18 settlement/rental agreements are void and unenforceable”. The Court
19 finds that while any contractual waiver contained within the terms of any
20 lease of mobile homes are by statute void as contrary to public policy,
21 settlement agreements between parties following closure of a park
22 regarding any disputes that may exist are not per se violative of public
23 policy nor contrary to the provisions of the Mobilehome Residency Law.
24 Were that the case, settlement agreements by and between litigants
25 regarding such issues would be void and such disputes could only be
26 resolved by trial. The Legislature certainly did not contemplate such a
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 TH AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792	
PLAINTIFF(S)/PETITIONER(S) DE ANZA COVE HOMEOWNERS ASSOCIATION INC.	
DEFENDANT(S)/RESPONDENT(S) CITY OF SAN DIEGO, et al.	Judge: CHARLES R. HAYES Dept.: 66
CLERK'S CERTIFICATE OF SERVICE VIA ELECTRONIC TRANSMISSION (CCP 1010.6/CRC 2.260)	CASE NUMBER GIC821191

I, **MICHAEL M. RODDY**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

ORDER ON MATTERS UNDER SUBMISSION BY THE COURT ON MARCH 19, 2007

on the designated recipient(s) below by causing said document(s) to be prepared in portable document format (*.pdf) for e-mailing and served **via electronic transmission** as file attachment through the San Diego Superior Court e-mail system and the transmission was reported as complete and without error.

Executed at:

San Diego Vista El Cajon Chula Vista Oceanside Ramona, California.

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**MICHAEL M. RODDY
CLERK OF THE SUPERIOR COURT**

Date: March 28, 2007

By: /s/ _____, Deputy

D. LIM