

# THE COMMUNITY OWNERS' ADVOCATE

## City of Santa Clarita Approves \$1.6 Million Dollar Capital Pass Through for Flood Damage Repairs

by Robert S. Coldren, Esq. and Mark D. Alpert, Esq.

Even under rent control, capital improvement expenses can be recovered. In December 2004 and January 2005, the area of Santa Clarita, California was hit with a series of what are termed "100 year" floods. Worse, the flooding came



after the devastating "Foothill" fire of 2004 which greatly increased the impact of flooding, resulting in significant property damage to a rent controlled park located in the City of Santa Clarita.

The flooding brought massive

amounts of mud and debris that jammed and collapsed the Newhall Creek drainage system. A bridge, which was the sole vehicle access to the park, was destroyed. The flood and debris destroyed the park's drainage system, frontage roads and much of the infrastructure in the park. The owners had to undertake emergency repairs, installing a temporary access bridge and then a permanent bridge, along with the replacement of the damaged road and utility infrastructure. The total cost of the repairs exceeded \$1.6 million dollars.

After the repairs were completed, the park owner sought a rent increase to cover the repair costs via an application to the City's Manufactured Home Rental Adjustment Panel. The City hired consultants prematurely to help the residents resist the rent increase application. The consultant's report

concluded the park owner did not need a rent increase or only needed a very small rent increase to obtain reimbursement for the cost of the project and recommended



excluding hundreds of thousands of dollars which were part of the expense.

In many cases, the city will simply follow the recommendation of the "independent" consultants. In this case, however, HKC was able to persuade the Rent Board to not only disregard the recommendation of the consultants, but also to stand up

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to overwhelming opposition by the park residents. On March 10, 2010, the City approved the park owner's request to pass through 100 percent of the requested \$1.6 million dollar pass through including interest. The park owner was represented by Mark Alpert of HKC throughout the hearing process.

*Rob Coldren is a founding partner of the law firm Hart, King & Coldren, a in Santa Ana, California. For over three decades, Mr. Coldren's practice has emphasized representation of mobilehome parks and recreational vehicle parks, as well as parkowners, throughout the State of California. He may be reached at 714-432-8700 or via e-mail at rcoldren@hkclaw.com. Mark D. Alpert is a partner with Hart, King & Coldren in Santa Ana, California. Mr. Alpert's practice has an emphasis on property rights, land use and rent control. He edits and is a major contributor to California Property Rights Journal at www.capropertryrights.com, a property rights and land use blog published by Hart, King & Coldren. Mr. Alpert may be reached at 714-432-8700 x. 355 or via email at malpert@hkclaw.com.*

## California Supreme Court Considers Whether a Referee or a Jury Will Decide Failure to Maintain Lawsuit

*By Robert G. Williamson, Esq.*

Would you rather have a runaway jury or a retired judge decide if the park owner or the tenants win?

Parties to a contract, whether a mobilehome park lease or single family residential purchase, sale or development agreement, may agree that any disputes between the contracting parties shall be decided by a judicial referee (retired judge) and not by a court or jury. This type of pre-dispute agreement is known as a "judicial reference" agreement. By going before a single referee instead of a judge or jury, the judicial reference agreement serves the same purpose as an arbitration agreement, in that it removes disputes from the "normal" court system for a quicker and hopefully more cost effective resolution.

A mobilehome park owner, was recently sued by the park residents for "failure to maintain" the park. Even though over eighty-percent of the residents involved in the lawsuit had previously signed pre-dispute judicial reference agreements, the residents refused to honor the agreements. The trial court sided with the residents and refused to enforce these valid agreements. The trial court based their decision on several reasons: (1) the residents that did not agree to have a referee hear their case, might receive different rulings from the court, even though their facts and the law are similar to those residents that did agree to a referee, thereby potentially causing more

lawsuits or appeals; and, 2) having some of the resident claims decided by a referee and some decided by the court was inefficient. After an appellate court refused to vacate the trial court's order, HKC petitioned the California Supreme Court for review.

In February 2010, the California Supreme Court granted a review. California's highest court will now consider whether trial courts must enforce these types of pre-dispute reference agreements.

This is a highly important issue for the housing industry and its ability to compel parties to honor written agreements that require participation in an alternative form of dispute resolution outside the court system. The California Association of Realtors® has stated it will file a "friend of the court" brief supporting enforcement of reference provisions. If judicial reference agreements are deemed invalid, the potential significance of this cannot be over emphasized for anyone who is party to a contract that contains an alternative dispute resolution provision agreeing to a judicial reference. If courts refuse to enforce these types of agreements, it would create a change in the law that would likely result in additional time-consuming, costly litigation, rather than promoting out-of-court alternative dispute resolution.

*Robert G. Williamson, Jr. is a partner with Hart, King & Coldren. He represents mobilehome park owners and managers with their various legal issues. He may be reached at 714-432-8700 x. 303 or via email at rwilliamson@hkclaw.com.*

## HKC Industry Seminars Update the Manufactured Housing Industry on New Laws

The mobilehome attorneys at HKC are committed to educating the manufactured housing industry on new laws or legal trends that impact the industry. Throughout the year, HKC offers educational seminars and webinars designed to provide park owners and property managers with invaluable information to run their day-to-day business.

HKC seminars are well received as seen by a recent note from an Orange County property management company:

***"I just wanted to say, 'Thank you' for sponsoring the Legal Seminar event last week. As you know, I'm getting up to speed in the mobilehome park world and having the opportunity to sit in with you to stay current about the law and other issues pertaining to mobilehome parks is a key to my learning. The content of the seminar was great and pertinent to real life. Additionally, it gave me a chance to meet others in the business (networking) and I've been able to contact two of the folks I met at your seminar. Thanks again, and I appreciate all the help you've been to me during this learning curve these past months."***

If you would like to join us at future seminars or webinars, please submit your email address to Karen Koenes, Director of Client Relations, at [kkoenes@hkclaw.com](mailto:kkoenes@hkclaw.com) to receive information and updates. If you are interested in a particular topic, feel free to send suggestions. HKC attorneys are available to present at your location as well.

### HKC Victory

## Beach City Approves Large Mobilehome Park Subdivision with Minimal Conditions

Hart, King & Coldren has subdivided many mobilehome parks. While many are friendly, cooperative affairs, on occasion, the City will dig their planning heels in and require a bit more "persuasion." This is one such case.

In another major victory for mobilehome park owners, the City of Huntington Beach gave final approval for a 304 lot subdivision of the Huntington Shorecliffs Mobilehome Park situated close to the beach. The subdivision was watched statewide and was fiercely opposed by the GSMOL, which brought in members from around the State to mount a campaign for denial. Opponents unsuccessfully attempted to depict the subdivision as "an economic eviction," to which the park owner responded that the residents may continue leasing and will not be forced to purchase their lots.

Facing a lawsuit from the park's attorneys, Rob Coldren and Boyd Hill of Hart, King & Coldren, and a park owner who was willing to be cooperative and flexible in accepting modest conditions, we won approval of the subdivision application with livable conditions. In its approval, the City Council refused to impose staff recommended conditions for off-site improvements that would have cost the park owner millions of dollars. Among the staff recommended conditions that the City Council dropped were conditions for installation of a sidewalk and drainage pipe along the entire park frontage and for a park water quality management plan.

This is a win-win-win. The tenants win an opportunity to potentially own the space. The City wins a good project. The park owner wins an economically viable project.

*Rob Coldren is a founding partner of the law firm Hart, King & Coldren, a in Santa Ana, California. For over three decades, Mr. Coldren's practice has emphasized representation of mobilehome parks and recreational vehicle parks, as well as park owners, throughout the State of California. He may be reached at 714-432-8700 or via e-mail at [rcoldren@hkclaw.com](mailto:rcoldren@hkclaw.com). Boyd Hills is an associate with Hart, King & Coldren and has extensive litigation experience in the areas of real property and land use. He may be reached at 714-432-8700 x. 327 or via email at [bhill@hkclaw.com](mailto:bhill@hkclaw.com).*

## Guggenheim v. City of Goleta Update

by C. William Dahlin, Esq.

On Tuesday, June 22, 2010 the Ninth Circuit Court of Appeal (en banc) heard oral arguments . Rob Coldren represented the Guggenheim family and Andrew Schwartz was the attorney for the City of Goleta. The eleven judges will now decide whether the prior ruling that the City of Goleta's rent control ordinance caused a "taking" of the park owner's property should be affirmed, modified or reversed.

The questions from the judges were fast paced and intense. The core of the Goleta park owner's case is that the City's new rent control ordinance (adopted in 2002) caused a regulatory taking of the park's property without compensation.

The case has been closely watched by not only the mobilehome industry, but property rights advocates from California to New York. It is hoped that a result will be forthcoming in the next six months. We will keep you updated.

*C. William (Bill) Dahlin is a Partner with Hart, King & Coldren in Santa Ana, California and has practiced law for over two decades. Mr. Dahlin's practice focuses on civil litigation with an emphasis on real property and property rights within the mobilehome park industry. He may be contacted at 714-432-8700 x. 306 or via email at bdahlin@hkclaw.com.*



200 Sandpointe, 4th Floor  
Santa Ana, CA 92707

**p: (714) 432-8700**

**f: (714) 546-7457**

**www.hkclaw.com**

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Santa Ana, CA 92707

