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San Rafael rent control: The eight-year war

A committed manufactured home community owner has won a pitched battle with a city and its rent control law. The prize is recovery of value in its property amounting to many millions of dollars.

In January 2000, MHC Financing, Ltd. (now known as Equity Life Style Properties [ELS]) filed suit in the United States District Court, Northern District of California. On April 17, 2009, Judge Vaughn Walker issued two orders.

Judge Walker issued an order for entry of judgment, and an order awarding attorney's fees. The two orders, collectively almost 70 pages in length, put an end (barring any appeal) to a lengthy saga.

The sum and substance of the two orders is fairly straightforward. The city of San Rafael will be enjoined from enforcing its manufactured home community rent control ordinance, to the extent it would apply to a new resident of Contempo Marin manufactured home community. In other words, immediate full vacancy decontrol with no additional rent limitations. . .the holy grail of manufactured home community rent control litigation. The injunction would become completely effective in 10 years. During the 10-year period of time, existing residents would continue to pay rent at the rent control rates. Thus, rent control is completely phased out over a 10-year period of time.

The second order sets forth the recovery of attorney's fees pursuant to 42 USC § 1983. The net attorney

fee recovery to ELS is \$1,800,000 for attorneys' fees arising out of its success in having the city's rent control ordinance declared unconstitutional.

The two orders from Judge Walker reiterate the long and tortured history of this litigation. The order for entry of judgment, which will enjoin the city of San Rafael from enforcing its rent control ordinance, was clearly the subject of much thought and consideration by Judge Walker. The concept of phasing in the injunctive relief to allow existing homeowners the benefit of reduced rent under rent control, for a finite period of time, allows for the economic status quo to be changed over the course of a decade. Judge Walker stated:

"The city, of course, is the party whose improvident decisions created this unfortunate situation. Any claims of hardship to the city itself would likely not move the court. But on this motion to stay enjoinder of the ordinance and modify the relief awarded the city seeks to piggyback on the interest claimed by the Contempo Marin residents, most of whom are embroiled in this litigation through no fault of their own."

In discussing the award of attorneys' fees, Judge Walker observed:

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- 13** MCM Seminar, San Jose
Airport Holiday Inn
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- 18** MCM Seminar, Santa Rosa
Hilton Sonoma Wine Country
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- 20** MCM Seminar, San Diego
Mission Valley Hilton
619.543.9000
- 25** MCM Seminar, Ontario
Airport Marriott
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- 26** MCM Seminar, Burbank
Burbank Airport Marriott
818.843.6000



September

- 17** Board of Directors Meeting
Corona del Mar

October

- 19** Board of Directors Meeting
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Esmeralda Resort & Spa
- 19-20** 2009 WMA Education Expo
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“While MHC’s attorneys and staff spent about double the time the City’s attorneys and staff spent, the court finds that MHC’s request is reasonable. MHC spent about a third more hours than the City litigating the contract claims (compare 3,871.7 professional hours expended by MHC (Doc #610), with 2896.35 professional hours spent by the City (Attachment 5)). Although the difference is significant in terms of hours, its significance diminishes considering the litigation postures of the parties. MHC was put to the test of attempting to prove the intent of City officials in entering into the settlement agreement. Pinning these officials down was no small task and ultimately unsuccessful. By contrast, all the City needed to do – and did do – was introduce testimony that City officials had not understood the agreement, something that did not require much attorney time. A third more hours spent by MHC under the circumstances was not unreasonable.

Most of the difference in time spent on this case was based on the substantial amount of time MHC attorneys spent on the various theories in support of MHC’s taking claim. MHC’s taking claim was both novel and complicated and the court finds it reasonable that it took a substantial amount of time to pursue. MHC faced enormous challenges stemming from a legal and constitutional land-

scape in avulsive change. The City had only to react. The court finds that the two-to-one ratio spent on this claim is justified given that MHC was forced to plow new ground in this area of the law.”

The order calling for entry of judgment very carefully walks through the competing concerns of the city, the community owner, and existing and future residents. The underlying decision, adjudicating the ordinance as unconstitutional, is a benchmark study in scholarly dissertation on how the current law of “takings” intersects with the draconian rent control adopted by the city of San Rafael. One can only hope that the city, at this late date, will finally agree to the wisdom of ending rent control, the well crafted decision should be presented to cities and counties that may yet be flirting with the idea of adopting rent control. ❄

Robert S. Coldren and C. William Dahlin are partners at the firm of Hart, King & Coldren. They specialize in mobilehome park law and regulatory takings/constitutional law. Rob and Bill acted as counsel to ELS (the Park Owner) in earlier phases of the litigation, but are not currently representing ELS in this particular lawsuit and thus do not speak for ELS on this matter. Both can be reached at (714) 432-8700.

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