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A Newsletter for Manufactured Housing Industry Community Owners & Managers

THE COMMUNITY OWNERS' ADVOCATE

The Ninth Circuit Holds that Mobilehome Rent Control Causes a Compensable Taking

HK&C Victorious in Guggenheim Case

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

In a groundbreaking decision, the Ninth U.S. Circuit Court of Appeals held that the City of Goleta's mobilehome rent control ordinance caused a compensable taking in *Guggenheim v. City of Goleta*. The decision was announced on Monday, September 28, 2009.

The decision not only breaks new ground in finding the adoption of rent control by the City of Goleta was a "taking," but also addresses many of the procedural hurdles that have often denied manufactured home community owners access to federal courts.

The three-judge panel ruled that Goleta's mobilehome rent control ordinance improperly imposes the burden of an affordable housing program on a single property owner, which is in violation of the U.S. Constitution's Takings Clause. The Court cited evidence showing that the park's rents had been frozen at 20 percent of fair market levels and that as a result of the rent control ordinance, residents could "sell" homes for many times their true worth as mobilehomes. These "transfer premiums" on sales made up 90 percent of the sale price of homes. Judge Jay S. Bybee, who authored the decision, described it as a "wealth transfer from the park owners to their tenants accomplished by the adoption of rent control." The Court recognized that the purpose of providing affordable housing was a legitimate governmental purpose, but that the Fifth Amendment did not allow the local government to impose that burden solely on mobilehome park owners. This is the first appellate decision in recent history, in which a court has found that the confiscatory application of rent control has resulted in a taking. Based on Hart, King & Coldren's extensive experience working in rent control, rent control is being applied in a similar fashion throughout California.

Much of the 75-page decision addressed the procedural barriers faced by property owners seeking their day in federal court. The Court outlined how a Supreme Court decision *(Williamson County)* has had the effect of denying property owners access to federal courts for federal takings claims. Under *Williamson County,* taking claims are not "ripe" in federal court (i.e. ready to be heard) until property owners first have sought and been denied "state compensation" in the form of an inverse condemnation lawsuit in state court. Many state courts are notoriously unfriendly to takings claims. (Indeed, California state courts have a well earned reputation for antagonism

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to property rights.) Those property owners with the will and resources to continue fighting in federal court after an adverse state court decision have found that such lawsuits are barred under judicial doctrines of "issue" and "claim" preclusion.

The decision is also notable because the plaintiffs in the lawsuit had purchased the property while it was under rent control. Relying on a rarely applied Supreme Court decision *Palozollo*, the Court held that a park owner who bought a property already subject to rent control could prevail on a takings challenge. The dissenting Judge disagreed with this conclusion.

Judge Bybee concluded the opinion with a strong affirmation that "we will not, therefore, throw these property owners back out and slam the courthouse door shut behind them. Today, our eyes are open. We have weighed the *Penn Central* factors, and we find that the RCO has affected a regulatory taking. Just compensation is due."

The ruling may have far reaching effects, as local governments will have to consider potential liability for takings when they adopt rent control. The decision may even cause some local governments to reconsider the decision to adopt or retain rent control ordinances. Even more importantly, the decision may also affect the way rent control is applied in those jurisdictions which already have rent control. Local rent boards should be more inclined to grant warranted rent increases to avoid the real potential of liability for a taking. The park owners were represented by Rob Coldren, Mark Alpert and Bill Dahlin of Hart, King & Coldren.

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Mobilehome Parks Bask in the Sunshine

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

Hart, King & Coldren won another important victory for mobilehome park owners, when one of the most vigorous anti-park cities in the State (Capitola) was chastised last week in open court by the Trial Judge for failing to comply with California's "sunshine law," and hiding documents from the park owner's review under claims of privilege. Mark Alpert and Rob Coldren worked on having the Judge grant this Writ of Mandate on October 2, 2009 requiring the City to turn over documents forthwith.

The reason this is so important is that often times, in rent control matters, subdivisions, change of use issues, park closures, conditional use permit entitlement issues, cities and counties have basically two levels of communication. At one level (opened to the public records) they appear as neutral stewards of the public's interests in seeing that the laws are followed regarding this issue. At another level, privately, in email exchanges sent to personal email accounts, in correspondence between members of the California League of Cities, etc., the City's communication paints quite a different picture. The cities that side with the tenants are incredibly focused on fees and expense, and will stop at nothing to inhibit a park owner's opportunity to subdivide, and to secure the appropriate rent increases.

Santa Cruz Superior Court Judge Almquist granted the Writ of Mandate, ordering the City to turn over the records and requiring the City to prepare a privilege log identifying all records and provided for in camera review to the extent the City continued to claim any privilege.

Having access to California's "sunshine" or open records act, and holding cities to require that they respond to government records requests by giving all of the documents asked for, will help keep cities "honest", and will allow park owners to hold cities that take advantage of the park owner's politically unpopular status accountable for losses the park owners may suffer.

Rob Coldren is a founding partner of the law firm Hart, King & Coldren, in Santa Ana, California. For over a quarter of a century, 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 can be reached at (714) 432-8700 or e-mail at rcoldren@hkclaw.com.

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Mobilehome Park Owners Win Important Rights Involving Heirs

by Robert G. Williamson, Esq.

Hart, King & Coldren has won an important victory for mobilehome park owners in the enforcement of park rules and regulations. The Second District Court of Appeals affirmed that a mobilehome park owner may remove an inherited mobilehome where the heirs fail to comply with park rules and regulations governing home and space maintenance.

In the case of *Ronald Simandle v. Vista de Santa Barbara,* the heirs, brothers Ronald and Warren Simandle, were ordered to pay the cost of removing the mobilehome from the park and to pay the park owner's attorney's fees (as well as the money paid for storage of the mobilehome on the space).

The heirs received a letter from Vista's manager listing the repairs that needed to be made before the home could be sold. A state report was also issued citing the home for various Mobilehome Parks Act ("ACT") violations. The Simandles fixed the Act violations, but did not correct the repairs identified by Vista's management. Because Vista is entitled under the MRL to enforce its own regulations, Vista was not estopped from seeking ejectment simply because the Simandles remedied the Act violations.

This case underscores two important issues for park owners and managers. First, diligently enforce a good set of rules and regulations governing maintenance of park mobilehomes and spaces. Those rules set the standard for compliance for heirs. Second, have in place a clear and definite protocol for dealing with heirs of a mobilehome. Do not allow the rights and duties set forth in the MRL concerning the right of an heir to sell a mobilehome in place, to unintentionally "morph" into a tenancy.

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

HK&C - The Mobilehome Industry Experts

Robert S. Coldren, Esq.

For over a quarter of a century, Hart, King & Coldren has become widely recognized as the premier legal representative for mobilehome park and manufactured housing industry clients. HK&C attorneys have appeared before municipal, county and state agencies representing community owners in connection with rent control, the restrictive use of land, and advocacy in arbitration and at trial. Given our expertise, HK&C has testified at hearings of the California Senate Select Committee on Manufactured Housing representing community owner's interests, have published numerous articles and are frequent lecturers at industry events and seminars. We offer free initial legal consultations.

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All of us at Hart, King & Coldren wish you a very Happy Holiday Season and a New Year of health, happiness and prosperity!

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