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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 24 2015



Sherri R. Carter, Executive Officer/Clerk
By Bettina M. Baker, Deputy

REC'D

SEP 21 2015

FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS and JOHN
HARBISON,

Plaintiffs,

vs.

CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
HOMES ASSOCIATION, a California
corporation; 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 and DOES 1 through 20,

Defendants,

Case No.: BS142768

(Assigned for all purposes to
Hon. Barbara A. Meiers, Dept. 12)

JUDGMENT

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

By Fax

BROEDLOW LEWIS LLP
www.BroedlowLewis.com

1 Whereas on May 29, 2015, the Court heard the motion for summary judgment by
2 Plaintiffs Citizens for Enforcement of Parkland Covenants (“CEPC”) and John Harbison
3 (“Harbison”), and by order dated June 29, 2015, the Court granted plaintiffs’ motion, and
4 good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
5 judgment is entered in favor of plaintiffs and against defendants as follows:

6 1. This judgment affects that undeveloped real property located in the City of
7 Palos Verdes Estates, County of Los Angeles, State of California described on **Exhibit “1”**
8 and shown as **Exhibit “2,”** the “Property.” (Property is also referred to at times herein as
9 “Area A”).

10 2. As to the first cause of action for declaratory relief:

11 a. The grant deed by the Defendant Palos Verdes Homes Association
12 (“Association”) to Defendant Thomas J. Lieb (“Lieb”), Trustee of the Via Panorama
13 Trust U/DO May 2, 2012 recorded September 5, 2012 as Instrument Number
14 20121327415 for the conveyance of the Property, and attached hereto as **Exhibit “3”**
15 is HEREBY ORDERED, ADJUDGED AND DECREED void and ultra vires and it
16 is cancelled and of no legal force and effect.

17 b. The quitclaim deed by Defendant City of Palos Verdes Estates (the
18 “City”) to the Association recorded September 5, 2012 as Instrument Number
19 2012327414 for the conveyance of the Property, and attached hereto as **Exhibit “4”**
20 is HEREBY ORDERED, ADJUDGED AND DECREED to be void and ultra vires
21 and it is cancelled and of no legal force and effect. The City shall execute a new deed
22 to the Association without conditions numbers 5 and 6.

23 c. Within three weeks of entry of this Judgment, Lieb is to execute and
24 deliver to plaintiffs’ counsel a quitclaim deed, from Lieb to the Association, in a form
25 suitable for recordation, conveying title to the Property back to the Association.
26 Should Lieb fail to do so, plaintiffs may apply ex parte for an order directing the Clerk
27 of this Court to execute a quitclaim deed in Lieb’s stead conveying title to the
28 Property back to the Association.

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d. Within three weeks of entry of this Judgment, Plaintiff shall take all steps necessary to record a copy of this judgment so it appears in the chain of title for the Property and file written evidence of such recordation with the Court.

e. The Court declares that the land use restrictions set forth in the following instruments, apply and are enforceable as they relate to the ownership and use of the Property:

- i) The restrictions executed on June 29, 1923 and recorded on July 5, 1923 entitled Declaration No. 1, excerpts of which are attached at pages 13 through 24 of the the attached **Exhibit “5,”** (the, “1923 Restrictions”);
- ii) Declaration No. 23 dated August 27, 1925 excerpts of which are attached at pages 4 through 8 of the the attached **Exhibit “5,”** (the “1925 Restrictions”);
- iii) The restrictions executed and recorded on July 26, 1926 entitled “Amendment No. 10 to the Declaration No. 20 of Establishment of Local Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges affecting Real Property known as Tract Nos. 7330” and Tract No. 8652 excerpts of which are attached at pages 9 through 12 of the the attached **Exhibit “5,”** (the, “1926 Restrictions”);
- iv) The Articles of Incorporation for the Association excerpts of which are attached at pages 25 through 29 of the the attached **Exhibit “5,”** (the “Articles of Incorporation”);
- v) The Bylaws for the Association excerpts of which are attached at pages 30 through 39 of the the attached **Exhibit “5,”** (the “Bylaws.”);
- vi) The attached excerpts of the documents, which comprise Exhibit “5”, are for informational purposes only; the entire provisions of the

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recorded documents apply and not just the excerpts.

- vii) Collectively, the 1923 Restrictions, the 1925 restrictions, the 1926 restrictions, the Articles of Incorporation and the Bylaws are referred to herein as the “Establishment Documents.” The Court recognizes the continued enforceability of Article VI, Section 1 of the 1923 Restrictions which provides for the extinguishment of the restrictions in the Establishment Documents by a vote of more than half of the property owners in the Association, provided the vote may only be held every twenty years commencing in 1960. The Court recognizes the continued enforceability of Article VI, Section 2 for the amendment of some basic land use restrictions by vote of 90 percent of all property owners within the Association. The Court recognizes the continued enforceability of Article VI, Section 3 for amendment of other land use restrictions by vote of two-thirds of the property owners within 300 feet of the affected property. The foregoing sections 1, 2 and 3 of Article VI are referred to collectively herein as the “Amendment Procedures”;
- viii) The 1940 Deed transferring a portion of the Property from the Association to the City (Tract 8652) is attached as **Exhibit “6.”**
 - 1. Section 3 of the foregoing deed establishes that the transferred portion of the Property “is to be used and administered forever for park and/or recreation purposes only....”
 - 2. Section 4 of the foregoing deed establishes that “no buildings, structures or concessions shall be erected, maintained or permitted upon said realty, except such as properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”

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3. Section 5 of the foregoing deed establishes that the transferred portion of the Property “shall not be sold or conveyed...except to a body suitably constituted by law to take, hold, maintain and regulate public parks...”
 4. Section 6 of the foregoing deed establishes that an owner abutting the Property may construct or maintain “paths, steps and/or other landscape improvements” to improve public access or views so long as it does not interfere with the use and maintenance of the transferred portion of the Property for “park and/or recreation purposes.”
 5. The deed also provides and the Court finds and declares that the foregoing restrictions are for the benefit of all Association property owners, run with the land and are a servitude in favor of each property owner in the Association.
- ix) The 1940 Deed transferring a portion of the Property from the Association to the City (Tract 7540) is attached as **Exhibit “7”**;
1. Section 3 of the foregoing deed establishes that the transferred portion of the Property “is to be used and administered forever for park and/or recreation purposes only...”
 2. Section 4 of the foregoing deed establishes that “no buildings, structures or concessions shall be erected, maintained or permitted upon said realty, except such as properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes.”
 3. Section 5 of the foregoing deed establishes that the transferred portion of the Property “shall not be sold or conveyed...except to a body suitably constituted by law to

1 take, hold, maintain and regulate public parks....”

2 4. Section 6 of the foregoing deed establishes that an owner
3 abutting the Property may construct or maintain “paths,
4 steps and/or other landscape improvements” to improve
5 public access or views so long as it does not interfere with
6 the use and maintenance of the transferred portion of the
7 Property for park and/or recreation purposes.”

8 5. The deed also provides that the foregoing restrictions are for
9 the benefit of all Association property owners, run with the
10 land and are a servitude in favor of each property owner in
11 the Association.

12 x) The 1940 Resolution by the City of Palos Verdes Estates accepting
13 the 1940 Deeds attached as **Exhibit “8”**; and

14 xi) Collectively, the 1940 Deeds attached as Exhibits “6,” “7” and “8,”
15 are referred to herein as the “1940 Deed Restrictions.”

16 f. The Association, and the City as to the properties belonging to it, have
17 the right and affirmative duty to enforce the Establishment Documents and the 1940
18 Deed Restrictions (Exhibits “5” through “8” attached hereto), including without
19 limitation the “forever parks” restrictions of section 3 of the 1940 Deed Restrictions,
20 the “no buildings or structures” restrictions of section 4 of the 1940 Deed Restrictions
21 and the “no landscaping” restriction of section 6 of the 1940 Deed Restrictions
22 attached as Exhibits “6” and “7” hereto. Within Ninety (90) days of entry of this
23 Judgment, the Association is ordered to take the following actions concerning the
24 encroachments on the Property:

25 i) Return the sports field area to its original hillside slope or as close as
26 is safely possible, with Court supervision should the need arise.

27 ii) Remove all landscaping and structures on the Property that violate
28 the Establishment Documents (Ex. “5”) and the 1940 Deed

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Restrictions (Exs. “6,” “7” and “8”) including without limitation:

1. The row of large (over forty feet high) trees, if privately planted on the Property;
2. Any other trees or bushes planted by private parties on the Property with the landscape to be restored as it was before the private planting;
3. The pillars, statues and wrought iron gates that were erected at the entrance of the driveway on the Property;
4. The driveway created by private parties if not proven to the Court’s satisfaction to be a fire road, such proof to be provided to the Court within 90 days of entry of Judgment that the road is allowed by the Establishment Documents (Exhibit “5”) or the 1940 Deed Restrictions (Exhibits “6,” “7” and “8.”)

iii) To the extent that any permit is required to be issued by the City in advance of the removal and restoration work described above, the City shall expeditiously issue all permits necessary for such work to commence within the time parameters of this Judgment. To the extent that the City is unable to issue such permits (at all or in the time frame set forth by this Judgment), the City shall apply ex parte to this Court in advance of the expiration of the time limits set by this Judgment and, if the City shows good cause, obtain an order granting the Association and City no more than an additional 60 days per application to comply with this Judgment.

iv) Within 15 days after the above removal and restoration work is completed and within 90 days post-judgment, the Association shall prepare photographic evidence that the work is completed and provide such photographic evidence to all parties to this lawsuit.

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Thereafter, neither the Association nor the City as to similarly situated property owned by the City that is subject to the Establishment Documents or the 1940 Deed Restrictions shall allow any new structure, vegetation or object to be maintained on the Property if it would violate the Establishment Documents or the 1940 Deed Restrictions.

g. Nothing contained in this Judgment shall prohibit any party from allowing landscaping, paths or other improvements whose purpose and effect are to improve the quantity and quality of the coastal view from the Property or public access to the Property to the extent permitted by, and done in compliance with all requirements under the Establishment Documents or the 1940 Deed Restrictions (Exhibits “5,” “6,” “7” and “8.”)

h. Nothing contained in this Judgment shall authorize or prohibit any party from taking any actions or filing any legal proceedings to recover the costs of encroachment removal from the other Defendants in this matter.

i. The Association is enjoined from conveying any right or title in the Property to any party other than an entity which is authorized by law to hold, maintain and operate public parkland.

j. The Association is enjoined from entering into any contract providing private parties the right to use the Property in violation of the Establishment Documents and/or the 1940 Deed Restrictions (Exs. “5,” “6,” “7” or “8.”)

k. Defendants Lieb, Robert Lugliani and Delores Lugliani are hereby enjoined from constructing or maintaining any structures on the Property or altering the landscaping on the Property (except to cooperate with the removal of landscaping as described in this Judgment). The right of Lieb, Robert Lugliani and Delores Lugliani shall be no greater or lesser than any member of the public to use the Property as a public park.

1 l. As to all real property located within the City and Association’s
2 jurisdiction that are subject to the same land use restrictions set forth in the
3 Establishment Documents or the 1940 Deed Restrictions, the City and Association
4 are enjoined from entering into any contracts or taking any actions to eliminate or
5 modify those deed restrictions unless the Association first complies with the
6 Amendment Procedures described in Article VI, sections 1, 2 or 3 of the attached
7 Exhibit “3.”

8 m. As to all real property located within the City and Association’s
9 jurisdiction that are subject to the same land use restrictions set forth in the
10 Establishment Documents (Ex. “5”) and/or the 1940 Deed Restrictions, should the
11 City or Association be a party to any instrument attempting to convey such property
12 in the future, that instrument must contain a statement substantially conforming to the
13 following language:

14 “This conveyed real property is subject to land use restrictions dating
15 back to 1923. Those land use restrictions have been held enforceable
16 in litigation in the Los Angeles Superior Court, *Palos Verdes Unified*
17 *School District v. Palos Verdes Homes Association*, Case No. BC431020 and
18 *Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates*,
19 Case No. BS 142768. The ownership and use of this conveyed
20 property is subject to those land use restrictions as enforced in the
21 judgments entered in those two cases.”

22
23 3. The Court hereby enjoins the City from creating an “open space, privately
24 owned” zoning district or from making any other order, ordinance, promulgation, or other
25 action which has the purpose or effect of nullifying, invalidating, ignoring or violating the
26 Establishment Documents or the 1940 Deed Restrictions (unless the Association has
27 successfully complied with the Amendment Procedures described in Article VI, sections 1, 2
28 or 3 of the attached Exhibit “3,” and then also complied with all requirements in the

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Establishment Documents and the 1940 Deed Restrictions (Exhs. "5," "6," "7" and "8.")).

4. The Court hereby enjoins the City from creating an "open space, privately owned" zoning district or from making any other order, ordinance, promulgation, or other action which has the purpose or effect of removing the Property from use for park and/or recreational purposes (unless the Association has complied with the Amendment Procedures described in Article VI, sections 1, 2 or 3 of the attached Exhibit "3," and then also complied with all requirements in the Establishment Documents and the 1940 Deed Restrictions (Exhs. "5," "6," "7" and "8."))

5. As to the third cause of action for Abatement of Nuisance, on Plaintiffs motion, the third cause of action for Abatement of Nuisance, was dismissed in light of the Judgment rendered as to all other matters.

6. As the prevailing parties, plaintiffs are entitled to recover their costs in the sum of \$_____ and their attorney's fees in the amount of \$_____ according to law.

7. The Court retains jurisdiction to enforce all terms of the Judgment, and any party may bring an *ex parte* to the Court if necessary.

8. All parties are enjoined from changing any aspect of Area A or the legal posture of the issues in the case until after the Judgment is signed and entered. The parties shall maintain the status quo. This does not prevent any party from filing an appeal.

DATED: 9/24, 2015

dt. Lauren Myers
JUDGE OF THE SUPERIOR COURT