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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MHC FINANCING LIMITED PARTNERSHIP, an Illinois limited partnership, and GRAPELAND VISTAS, INC., an Illinois corporation,

Plaintiff,

v.

CITY OF SAN RAFAEL, a municipal corporation, and CONTEMPO MARIN HOMEOWNER'S ASSOCIATION, a California corporation,

Defendants.

Case No. C 00-03785 VRW

CONTEMPO MARIN HOMEOWNERS ASSOCIATION'S RESPONSE TO PLAINTIFFS' OPPOSITION TO MOTION FOR STAY OF INJUNCTION

Hon. Vaughn R. Walker

Hearing Date: not set
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I. INTRODUCTION

In response to this Court's request for briefing on whether its forthcoming injunction in this action ("Injunction") against enforcement of the San Rafael Rent Control Ordinance (the "Ordinance") should be stayed pending appeals by CMHOA and the City, Defendant Contempo Marin Homeowners Association's ("CMHOA") Request for Stay Of Injunction ("Request") demonstrated that the factors set forth under *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987), favor staying the Injunction to preserve the *status quo* pending appellate review. The brief in favor of a stay filed concurrently by co-Defendant the City of San Rafael ("City"), which CMHOA joins, set forth additional reasons why a stay should be granted. Together, Defendants established that they have a substantial likelihood of success on the merits of their appeal, or that serious and difficult legal questions would be presented on appeal; that irreparable harm will result unless this court's injunction ("Injunction") is stayed pending appeal; that MHC will not be irreparably harmed by a stay; and that the public interest favors a stay.

In contrast, the brief filed concurrently by Plaintiff MHC Financing Limited Partnership ("MHC"), in opposition to Defendants' request for a stay, fails to overcome Defendants' showing. First, MHC overstates the burden that Defendants must meet to show that a stay is appropriate and ignores a significant prong of the standard under which stay requests are evaluated in the Ninth Circuit. MHC then asserts that Defendants cannot show likelihood of success on the merits, but does not address any of the specific legal arguments raised by Defendants in their briefs and does not attempt to address the prong of the standard that it ignores—*i.e.*, whether Defendants' appeal raises serious legal questions. MHC then argues, incredibly, that Defendants would *not* be irreparably harmed if residents of the Contempo Marin Mobilehome Park (the "Park") are subjected to onerous rent increases that would certainly force them to relocate, but that MHC *would* be irreparably harmed by maintaining the Ordinance in place during the pendency of appeal in order to preserve the *status quo*. Finally, MHC contends that it is entitled to a $10.5 million supersedeas bond if a stay is granted, but provides no authority to support requiring a bond as a condition of a stay here—where only injunctive relief is at issue, MHC has no vested right to monetary payment, and MHC waived any claim for past or future

damages prior to the trial. This Court should stay its Injunction to preserve the *status quo* pending appeal, and should deny MHC's exorbitant and unwarranted bond request.

II. A STAY OF THE COURT'S INJUNCTION IS WARRANTED

Under Rule 62(c) of the Federal Rules of Civil Procedure ("Rule 62(c)"), a stay of the Court's injunction is warranted here. MHC misstates the standard governing stays of injunction pending appeal, by asserting that Defendants must establish a "strong likelihood" of reversal and disregarding entirely the "continuum" under which Rule 62(c) motions are determined in the Ninth Circuit—whereby a stay can by justified by demonstrating *either* "a probability of success on the merits and the possibility of irreparable injury" *or* that "serious legal questions are raised and that the balance of hardships tips sharply in [the moving party's] favor". *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983).

Plaintiffs cite *Coalition for Economic Equity v. Wilson*, 1997 WL 70641 (N.D. Cal. 1997) for the proposition that a party seeking a stay pending appeal bears a "heavy" burden. However, the factors favoring denial of the requested stay in *Coalition for Economic Equity* illustrate precisely why a stay is needed here. In *Coalition for Economic Equity*, the plaintiffs had won a preliminary injunction against enforcement of a new California state constitutional amendment ("Proposition 209"), which forbade state and local governmental entities from maintaining race- and gender-conscious preferences. 1997 WL 70641. The defendants moved for a stay of the injunction, which would have enabled them immediately to put Proposition 209 into effect and eliminate all such preferences prior to the impending appellate review of the injunction. *Id.* In denying the defendants' requested stay, the Court noted that stays pending appeal, like preliminary injunctions, are designed to "preserv[e] the status quo prior to a full adjudication on the merits." *Id.* There, enacting the requested stay before review by the Court of Appeals would have produced exactly what a Rule 62(c) stay is supposed to prevent—"on-again, off-again" treatment of the law in question resulting in statewide disruption and confusion, which would not have served the public interest. *Id.* Here, by contrast, the public interest in preservation of the *status quo* and avoiding the irreversible disruption that would result from immediate vacation of the Ordinance (as described more fully in CMHOA's Request at 11-12 and the declarations filed

by CMHOA in support of its Request) requires that the Injunction be stayed until appellate review is complete.

Plaintiffs also cite the denial of a stay in *E.E.O.C. v. Harris Farms*, 2006 WL 1881236 (E.D. Cal. 2006), in support of their assertion that a party seeking a stay pending appeal faces a difficult burden. However, that case is distinguishable. First, the defendant who sought the stay in *E.E.O.C.* failed to produce any evidence showing specific irreparable harm that would have resulted from denial of a stay of the injunction at issue (which required the defendant to take measures to prevent or curtail sexual harassment). *Id.* at *2. In contrast, CMHOA has produced multiple declarations demonstrating that denial of a stay here would result in *specific* Park residents being forced to relocate upon MHC more than doubling their rents. (Decl. of Candace Clark ¶¶ 5, 7-8; Decl. of Khadija Gallagher ¶¶ 5-6, 8-9; Decl. of Ben Ludin ¶¶ 4-6, 12-13; Decl. of Tracy Newman ¶¶ 5-8, 10; Decl. of Patricia Passiz ¶¶ 5, 8-9; Decl. of Charlean Pohl ¶¶ 5-6, 8-9; Decl. of Katty Samoun ¶¶ 6-7, 9-10; Decl. of Bette Whitt Ellett ¶¶ 5-6, 8-9; *see also* Decl. of Alex C. Sears, Exh. A.) Second, in *E.E.O.C.*, the defendant failed to demonstrate likelihood of success on appeal, instead showing "only a possibility," which was remote. 2006 WL 1881236 at *15. Here, there is no such issue: the City and CMHOA have demonstrated a substantial probability of success on the merits with regard to the Court's legal conclusions. (*See* CMHOA's Request, at 5-12; City's Motion, at 16-19.) Further, the balance of hardships tips more strongly in CMHOA's favor here than in *E.E.O.C.*, and therefore, on the *Lopez v. Heckler* "continuum" (*see* 713 F.2d at 1435), CMHOA and the City need not even demonstrate a strong probability of success to warrant a stay, only that "serious legal questions" are raised, *id.* CMHOA and the City have met this standard as well. (*See* CMHOA's Request, at 5-12; City's Motion, at 16-19.)

A. DEFENDANTS HAVE DEMONSTRATED LIKELIHOOD OF SUCCESS ON THE MERITS AND/OR SERIOUS LEGAL QUESTIONS ON APPEAL

Defendants have not—as MHC contends in a brief prepared before it had even seen Defendants' papers—merely "reiterated" arguments previously made before this Court to demonstrate a likelihood of success on the merits. Rather, Defendants have made a strong showing that at a minimum, "serious legal questions" will be raised on appeal, and further that

they have a probability of success on the merits. *See Lopez v. Heckler*, 713 F.2d at 1435 (setting forth "continuum" for evaluating stay motions). (*See* CMHOA's Request, at 5-12; City's Motion, at 16-19.)

As Defendants demonstrated in their moving papers, CMHOA does not need to show that reversal is certain or even highly probable to meet its burden to demonstrate a substantial case on the merits, and this Court does not need to—and should not be expected to—conclude that its ruling was mistaken in order to grant a stay. *Robinson Rubber Products Co., Inc. v. Hennepin County, Minn*, cited by Plaintiffs, demonstrates the application of this standard: there, the district court recognized that even though it had "previously considered and found unpersuasive" the cases cited by the moving party, and even though the Court "believe[d] its decision to be firmly grounded upon Supreme Court precedent," the district court's order was "one of first impression within a very controversial area; a fact which suggests that it presents a novel and substantial question sufficient to weigh in favor of granting a stay of [the] permanent injunction." 927 F. Supp. 343, 347 (D. Minn. 1996). Here, as demonstrated in Defendants' moving papers, this Court's decision presents a number of novel legal questions in the controversial and rapidly-evolving area of takings law as applied to rent control regulations. (*See* CMHOA's Request, at 5-12; City's Motion, at 16-19.) Further, the City and CMHOA have demonstrated a substantial probability of success on the merits with regard to the Court's findings: (1) that the Ordinance constituted a regulatory taking under *Penn Central Transp. Co. v City of New York*, 438 U.S. 104 (1978); (2) that the Ordinance effected an unconstitutional "private taking" under *Kelo v City of New London*, 545 U.S. 469, 480 (2005); (3) that MHC's claims are not barred by the statute of limitations and/or *res judicata*; (4) that MHC's claims are ripe; (5) that the Court applied the correct economic analysis of harm to MHC resulting from the 1999 amendments to the Ordinance; (6) that mobilehomes cannot gain in equity; and (6) that the Ordinance was not severable. (*Id.*) Under either end of the *Lopez v. Heckler* "continuum," a stay is favored here.

B. THE BALANCE OF HARDSHIPS STRONGLY FAVORS GRANTING A STAY

As CMHOA's Request and its supporting declarations established, specific and irreparable harm will result from the Ordinance being invalidated. MHC has demonstrated that it

intends immediately to raise monthly pad rent on residents to $1,925 on all lots. (Decl. of Candace Clark ¶ 6 & Exh. A; Decl. of Khadija Gallagher ¶ 7 & Exh. A; Decl. of Ben Ludin ¶ 10 & Exh. A; Decl. of Tracy Newman ¶ 9; Decl. of Patricia Passiz ¶ 7 & Exh. A; Decl. of Charlean Pohl ¶ 7 & Exh. A; Decl. of Katty Samoun ¶ 8 & Exh. A; Decl. of Bette Whitt Ellett ¶ 7 & Exh. A.) That rent increase will impose severe financial hardship on many, if not most, Park residents and result in a mass relocation out of the Park. (Decl. of Candace Clark ¶¶ 5, 7-8; Decl. of Khadija Gallagher ¶¶ 5-6, 8-9; Decl. of Ben Ludin ¶¶ 4-6, 12-13; Decl. of Tracy Newman ¶¶ 5-8, 10; Decl. of Patricia Passiz ¶¶ 5, 8-9; Decl. of Charlean Pohl ¶¶ 5-6, 8-9; Decl. of Katty Samoun ¶¶ 6-7, 9-10; Decl. of Bette Whitt Ellett ¶¶ 5-6, 8-9; *see also* Decl. of Alex C. Sears, Exh. A.)[1] MHC's crass characterization of this impact on residents as merely "monetary consequences" does not account for the irreversibility of forced relocation if the Ordinance is later upheld. Neither does it account for the economically-immeasurable consequences of forced relocation on families. As the uncontested trial evidence demonstrated, the Park's residents are significantly poorer than most residents of San Rafael or Marin County (*see* Trial Exhs. 1004-1017), and nearby housing prices are much higher than those within the Park (*see* Trial Transcript, 4/24/2007, at 590:18-591:18 [Quigley]). Thus, it is clear that relocation for most residents will not be a matter of simply moving a short distance away from their current homes. Apart from the generally-foreseeable consequences of relocation, such as children changing schools or workers moving farther away from their jobs, some residents have elderly or disabled relatives who live very close by and depend on them for care (*see* Decl. of Patricia Pasisz in Supp. of Request for Stay ¶ 6; Decl. of Tracy Newman in Supp. of Request for Stay ¶ 8); forced relocation will make this care much more burdensome. These impacts far exceed mere "monetary consequences."

Further, the serious legal questions raised on appeal and the possibility of reversal create the very likely scenario of an "on-again, off-again" treatment of the Ordinance (*Coalition for*

[1] While MHC asserts that it has offered to "discuss a transition plan" with Park residents, it offers no description or evidence of the terms of its purported "transition plan," and the terms of this "plan" remain a mystery to CMHOA. Neither CMHOA nor this Court can determine, based on the information presented by MHC to date, whether its purported "plan" would in any way protect residents from being forced out of their homes upon vacation of the Ordinance due to their inability to pay MHC's raised rents.

Economic Equity, 1997 WL 70641), which will cause confusion in the Park and in other mobile home parks statewide that are subject to similar rent control ordinances, and will cause residents to relocate even though the Ordinance may ultimately be restored.

On the other hand, *MHC* is the party that will suffer "only monetary consequences" if a stay is put in place and this Court's ruling is ultimately upheld by the Court of Appeals: specifically, MHC will be denied the opportunity to more than double rents if the Ordinance remains in place during the pendency of appeal. MHC has not demonstrated that this would constitute irreparable harm. If the Ordinance has in fact diminished the value of MHC's property by $97 million, as MHC contends, then MHC stands to gain approximately that amount of value in its property if this Court's order is ultimately upheld on appeal. Given that this huge property value increase would result from vacating *even the portions of the Ordinance that were in place when MHC purchased the Park* and were previously found to be permissible (*see* Order ¶¶ 26-32), MHC would thus enjoy a financial gain far beyond its reasonable initial expectations at the time of purchase (*id.* ¶ 30).[2] Thus, MHC's contention that it stands to suffer uncompensable harm if the Ordinance is stayed pending appeal is without merit, because if MHC is ultimately successful on appeal, a stay will only have delayed MHC's windfall a relatively short time.

Finally, MHC's assertion that Defendants are "equitably precluded" from a stay is unsupported by citation to any authority or equitable principle, and as such it merits no consideration. The Court should disregard MHC's "equitable preclusion" contention for the additional reason that the jury found that the City did not breach the Settlement Agreement by ultimately declining to amend the Ordinance (*see* Order at 2).

C. THE PUBLIC INTEREST FAVORS GRANTING A STAY

CMHOA's Request demonstrated that a stay will benefit the public interest through preservation of the *status quo* in order to prevent disruption both within the Park and elsewhere in California. *See also Coalition for Economic Equity*, 1997 WL 70641 (public interest favors stay to preserve status quo and prevent disruption prior to appellate review). MHC fails to

[2] The enormous property value increase MHC stands to realize if it prevails on appeal is an additional reason why its request for a $10.5 million bond is unwarranted. (*See* Part II.C below.)

address any of those public concerns, citing instead a vague interest in "enforcement of the United States Constitution." However, this argument merits little weight, in light of the significant possibility that the Court of Appeals may ultimately determine that no Constitutional violation has taken place here.

III. A SUPERSEDEAS BOND IS NOT APPROPRIATE

Even though MHC waived all damages on its Constitutional claims before trial, MHC now argues that it is entitled to a "supersedeas bond" in the event a stay is granted, in the astounding amount of $10.5 million—purportedly representing the difference between residents' current rents and the rents that MHC wishes to collect during the pendency of appeal in the absence of the Ordinance. MHC's baseless request for a bond should be denied.

Rule 62(c) "authorizes, *but does not require*, the posting of a bond" in an injunction case. *Stone v. City and County of San Francisco*, 145 F.R.D. 553, 560 (N.D.Cal. 1993) (emphasis added). The only two cases cited by MHC in favor of its argument have no bearing on whether a bond requirement would be an appropriate condition to a Rule 62(c) stay of injuction in a takings case: those cases concerned the automatic stay of execution of a *money judgment* on posting of a supersedeas bond, pursuant to Rule 62(d). *Wilmer v. Board of County Com'rs of Leavenworth County, Kan.*, 844 F. Supp. 1414, 1417 (D.Kan. 1993); *Markowitz & Co. v. Toledo Metropolitan Housing Authority*, 74 F.R.D. 550, 550 (D. Ohio 1977). *See also Stone*, 145 F.R.D. at 553 (distinguishing a supersedeas bond for stay of a monetary judgment under Rule 62(d) from the discretionary bond available in injunction cases under Rule 62(c)). MHC cites *no* authority finding a bond under Rule 62(c) appropriate where the order appealed from was one finding a rent control statute unconstitutional under the Takings Clause, and CMHOA is aware of none. There is no money judgment or other vested right to payment pending against Defendants here—in fact, MHC *waived past and future constitutional damages* in this case prior to trial. (*See* Order (granting in part City of San Rafael's motion for summary judgment and granting motion to dismiss), Case 3:04-CV-03325, Dec. 5, 2006, at p. 32.) Therefore a bond would neither be equitable here in light of MHC's damages waiver, nor would it serve the purpose of protecting plaintiffs from a loss "resulting from stay of execution." *See J. Perez & Cia., Inc. v. U.S.*, 578 F.

Supp. 1318, 1320 (D.P.R. 1984) (explaining that "[t]raditionally, the supersedeas bond has been confined to money judgments from which a writ of execution can issue.") Finally, it was undisputed at trial that the Park's residents are significantly poorer and more likely to live on fixed incomes than most residents of San Rafael or Marin County. (Trial Exhs. 1004-1017.) Against that fact, imposition of a bond—particularly one as high as MHC seeks—could be tantamount to denying the Park residents the opportunity to appeal their case. This Court should deny MHC's request for a supersedeas bond as a condition to the requested stay.

IV. CONCLUSION

For the foregoing reasons, CMHOA requests that this Court issue a stay pending appeal, and that no supersedeas bond condition be imposed.

Respectfully submitted,

Dated: March 31, 2008

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