

## San Rafael, homeowners lose Contempo Marin rent-control lawsuit

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Rents could rise in a decade in north San Rafael for residents of the rent-controlled mobile home park Contempo Marin now that a U.S. District Court judge has reaffirmed his belief the city's rent-control ordinance is unconstitutional.

U.S. District Judge Vaughn Walker in San Francisco issued an order for entry of judgment on Friday, after releasing findings of fact in January 2008 declaring San Rafael's rent-control ordinance violated the Fifth Amendment against government "taking." A stay of the order, which was denied Friday, had been sought to bar a rent increase until the lawsuit was resolved.

The decision nullifies the ordinance in 10 years - a time frame developed to give residents time to adjust to the market-rate rent adjustments - and calls on the city to pay Contempo's owner, Chicago-based Equity LifeStyle Properties Inc., \$3 million in attorneys' fees, although city would end up paying \$1.8 million based on a related ruling. If homeowners sell, the new owners will be subject to market-rate rent on the "pads," or land where the mobile homes sit. Homeowners lease the land from the property owner.

"During this 10-year period, the only 'hardship' current residents of Contempo Marin will suffer is the inability to capture the artificial premium in the resale price of their mobile homes that the ordinance creates," the judge's order reads.

"We're just looking forward to operating the property outside of the cloud of litigation and putting this whole thing behind us," said Kiley Russell, a spokesman for Equity LifeStyle Properties. "We feel it's a fair and reasonable transition plan that we can live with."

The city and the homeowners have 30 days to issue a notice of appeal once the judgment is recorded. A decision on whether to appeal has not yet been made, attorneys for the city and the homeowners said.

"We are assessing our options right now," said Craig Daniel, a San Francisco attorney representing the homeowners. "We haven't decided. It's certainly a possibility."

San Rafael officials could not immediately come up with a total figure of how much the city had spent on its own attorneys' fees.

Talk abounded last year that Equity LifeStyle Properties planned to more than double Contempo Marin rent to as high as \$1,925 per month, which would be out of reach for many of the park's residents who are on fixed incomes, officials said.

"Obviously the fact that the judge has effectively stayed enforcement to the current residents for 10 years is a good thing," said Michael Ng, an attorney who represents the city. "What it doesn't do is restore the equity that the residents have in their homes. The judge found that the only equity they have as a legal matter is the salvage value of the home, which we think is dead wrong and contrary to well-established law."

"It's certainly not what we wanted, but a half a loaf is better than none," said Dick Heine, president of the Contempo Marin Homeowners Association. "When the actual judgment comes out we need to make a decision where do we go from there."

Residents of the mobile home park just off Smith Ranch Road have endured years of legal back-and-forth.

The park's owner sued the city of San Rafael in October 2000, challenging the constitutionality of the city's ordinance, passed in 1989, to keep the 396-unit park affordable.

A settlement was reached in July 2001, but residents convinced the City Council to back out, prompting the park's owner to add to the suit accusations that the city breached the settlement agreement.

In November 2002, a jury ruled in favor of the city on the settlement issue, but it held off on other matters pending a U.S. Supreme Court ruling on a case involving the oil industry. The city on Friday was awarded \$1.2 million in attorneys fees for prevailing on the contract portion of the case.

Based on the Supreme Court ruling, Equity LifeStyle Properties amended its complaint to change its theory of the constitutional violations alleged. Judge Walker's decision is based on evidence presented in 2002 and in the amended complaint.

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