No. D053490

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

DE ANZA COVE HOMEOWNERS ASSOCIATION,

Plaintiffs and Appellants,

v.

CITY OF SAN DIEGO,

Defendant and Respondent.

Appeal from an Order
Of the Superior Court, County of San Diego, No. GIC821191
Hon. Charles Hayes, Judge

APPELLANTS' OPENING BRIEF

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INTRODUCTION

The City of San Diego (City) was ground lessor, and became owner, of a mobilehome park popularly known as De Anza Cove. (3 AA 625, 711.) It managed the land to maximize profit. (3 AA 598.) In both capacities, the City attempted to exempt itself from the requirements of the Mobilehome Residency Law, Civil Code section 798, et seq. (MRL), and its own ordinances to address the adverse impacts on park residents that would result from closing the park. San Diego Mun. Code, §§ 143.0615(b), 143.0610.).) Among other things, when it closed the park in 2003 it prepared no report on adverse impacts of displacing people from more than 500 homes, and it claimed exemption from any requirement to provide compensation or assistance to the displaced people. (2 AA 462; 3 AA 717.)

For good reason, the MRL uniquely protects mobilehome owners and park residents from park closings. Mobilehomes are not mobile. (Civ. Code, § 798.55, subd. (a).) Coldly, mobilehomes are manufactured houses that become affixed to a landlord’s real estate. They are also households in which families make major investments expecting long term residence. In a real estate market characterized by undersupply of low income housing, opportunities for abuse and risks of forfeiture abound.

The superior court summarily adjudicated that the City and De Anza Cove were subject to the MRL, and the City violated the MRL by not preparing an impact report or mitigating the adverse impacts of park

closure. (3 AA 711.) There is no cross-appeal, so the City cannot contest the summary adjudication.

After summary adjudication, the superior court conducted a trial for the announced purpose, agreed by the parties, of determining the monetary element of mitigation to which the displaced mobilehome owners and residents were entitled. (15 RT 493-494. 496-497, 499-500, 508; RT vols. 18-25.) But in the end, the superior court issued an immediately effective permanent injunction requiring the City to prepare an impact report and submit it to two special masters (referees, actually) for review before final adjudication by the court. (4 AA 1038-1041.)

Plaintiffs, representatives of a certified class of mobilehome owners and residents, appeal. Plaintiffs will show that the injunction erred; the superior court should have decided the case itself, and it lacked jurisdiction to appoint referees to do its work. Plaintiffs are also entitled to review of pretrial orders and other decisions made after trial under Code of Civil Procedure section 906. As to those issues, plaintiffs will show:

1. The superior court erroneously excluded compensation for the loss of one's home upon park closure from the relocation benefits required by the MRL.

2. In ruling on demurrers, the superior court erroneously terminated causes of action under the California Relocation Assistance Law, for inverse condemnation, and under the California Constitution.

3. The superior court abused its discretion by eliminating two subclasses of displaced persons from the class. The larger subclass consists of persons whom the City can prove to have signed agreements waiving relocation benefits. The waivers are void as a matter of law under the MRL. The court's exercise of discretion was therefore wrongly based on an error of law. Elimination of the smaller subclass rests on a similar misunderstanding.

4. The superior court erroneously denied a jury trial on certain issues of actual damages recoverable under Civil Code section 798.86 and Government Code section 815.6.

STATEMENT OF FACTS

The court defined a substantial body of undisputed historical facts in ruling on cross-motions for summary judgment or summary adjudication of issues. Those facts are set forth in parts A through E *post*. Part F of this statement reflects facts developed at trial.

A. The City Acquired Mission Bay Tidelands in Trust for the Public and Entered into a 50 Year Master Ground Lease of De Anza Cove

In 1945, the State Park Commission granted the property formerly known as Mission Bay tidelands to the City of San Diego. (Stats. 1945, ch. 142, § 1, pp. 627-629.) In 1951, the City entered into a 50-year Master Ground Lease of some of that land, popularly known as De Anza Cove.

(3 AA 711.) The lease term began November 24, 1953 and expired November 23, 2003. (*Ibid.*)

A City document from the early 1960's describes the purpose of the Master Ground Lease as "Tourist & Trailer Park: Total Constructed Units 522 plus 160 to be constructed. 126 Vacation Units; 12 Transient Units; 384 permanent units; 160 permanent units to be constructed by June 15, 1963." (3 AA 712.) De Anza Harbor Resort and Golf (DHRG) became assignee of the Master Ground Lease. (3 AA 712.) The mobilehome park at De Anza Cove became home to approximately 509 households. (1 AA 197.)

Starting in 1969, the City's consistent goal in managing De Anza Cove was to maximize its revenue potential. (3 AA 598.)

In 1978, the Legislature enacted the MRL. (3 AA 712.)

B. Under the Kapiloff Bill, the City Is Allowed To Continue the Use Until Expiration of the Ground Lease in 2003 and To Obtain an Increase in Ground Rent

The Legislature enacted chapter 1008 of the Statutes of 1981 (Kapiloff Bill[1]) to address the unusual use of Mission Bay trust land for a residential mobilehome park. (3 AA 713.) The Kapiloff Bill provides that the De Anza Cove mobilehome leases may continue only if the City of San

[1] The Kapiloff Bill is sometimes referred to in the record as Assembly Bill 447 or AB 447.

Diego enacts a resolution by February 1, 1982 concurring in the specific findings of the Kapiloff Bill. (Stats. 1981, ch. 1008, § 4, p. 3906.) These findings included permitting the permanent sites at De Anza Cove to remain until November 23, 2003. (*Id.*, § 1(f), p. 3903.)

Specifically, the Kapiloff Bill provided in sections 1(b) through 1(f) that: "The described lands were intended by the Legislature to be used for public recreation and public recreational support facilities, which uses could encompass transient-type guest housing. However, the described lands have in fact been developed with permanent sites for mobilehomes which can no longer be considered public guest housing facilities. . . . In balancing the hardship of relocating tenants with current public needs for expanded recreational lands on Mission Bay sufficient lands are available or can be made available for recreational purposes on Mission Bay until the year 2003. In view of the foregoing, tenants should not be forced by reason of their residential use of the described lands, to relocate outside those lands before November 23, 2003. . . ." (Stats. 1981, ch. 1008, § 1, p. 3903.) The Kapiloff Bill also provided: "this policy is not intended to affect the rights and obligations of landlord and tenant under the terms of existing leases." (*Id.*, § 1(f).)

Under the Master Ground Lease, as operated until the City's response to the Kapiloff Bill, the City received five percent of the revenues generated by the 544 permanent units, the 126 vacation units, the 12

transient units; the City received income at various rates based on ancillary facilities including the convenience store, beauty shop operations, slip and boat rentals, and gas and oil sales. (3 AA 712.)

Before ratifying the Kapiloff Bill, the City estimated that it would owe the De Anza Cove homeowners $7 million if it were feasible to relocate the homes at the time of park closure or $20-$25 million if it were not feasible to relocate the homes. (3 AA 568-569, 572, 714.) The City Manager projected total income to the City from the mobilehome park under the Master Ground Lease would be about $9 million by the year 2003, unless the City modified the lease to increase its share of revenue. (2 AA 319.) The City Manager provided the City with two alternatives: "(1) Do not support [the Kapiloff Bill], terminate the Lease in 1988, pay relocation costs and the remaining value of improvements and solicit proposals for a new development. (2) Support [the Kapiloff Bill] with the renegotiated lease rate and continue existing use until 2003." (1 AA 714.)

A January 1982 City Manager report recommended in part the execution of a tenth amendment to the Master Ground Lease. The tenth amendment would increase the rental rate and "allow [DHRG] to submit a plan for development of a hotel on the area of the leasehold not utilized by mobilehomes. . . ." (3 AA 714.) This plan "would generate revenues to the City on the order of $50-$60 million by the year 2003." (*Ibid.*)

The City's council then enacted a resolution endorsing the Kapiloff Bill and maintaining the operation of the mobilehome park into 2003, contingent upon execution of the tenth amendment to the Master Ground Lease increasing the income to be received by the City. (3 AA 714-715.) The City projected that the tenth amendment would *increase* City ground lease revenue between $32 million and $50 million through 2003. (2 AA 323.) The City and DHRG executed the amendment. (3 AA 603.) It quadrupled the City's share of rents from five percent in 1982 to 20 percent in 1988 and thereafter. (3 AA 567.) DHRG passed the increases through to the De Anza Cove mobilehome owners. (3 AA 567, 712.)

In August 1982, the City sent notices to tenants at De Anza Cove providing each tenant with a copy of the Kapiloff Bill. (3 AA 715.) This was required by the Kapiloff Bill. (Stats. 1981, ch. 1008, § 3(d), p. 3906.) Nothing in the Kapiloff Bill touches the subject of relocation benefits. (Stats. 1981, ch. 1008.) Nevertheless, the City's notice stated that the tenth amendment to the Master Ground Lease provided in part that "all present and future occupants of mobile home spaces . . . shall not be entitled to and may not claim: a. Any relocation allowances . . . by reason of, or arising out of, the provisions of the said [Kapiloff Bill] or by virtue of any action or inaction of Lessee or Lessor pursuant to said Bill. . . . The date of expiration of the basic lease is November 23, 2003, . . . under no

circumstances shall any occupant's term be extended beyond November 23, 2003. . . . " (3 AA 614.)

Despite its August 1982 notice, the City conceded:

► "Nowhere in the Kapiloff Bill is any intent stated to exempt the City from compliance with the [MRL], or the tenant impact reporting requirements mandated by the MRL" (3 AA 544);

► "[T]here is nothing on the face of the Kapiloff Bill that permits the [City] to evict the mobilehome park owners and residents without first complying in full with the applicable State laws" (3 AA 552);

► The Kapiloff Bill authorized no waiver of the relocation benefits of De Anza Cove mobilehome owners and residents (3 AA 588).

C. Rental Agreements and City Legislation Purport To Deprive De Anza Cove Residents and Owners of Relocation Benefits Under the MRL

In September 1989 residents entered into long term rental agreements ("LTRAs") with DHRG. (3 AA 715.) These agreements expressly provide that they are governed by the MRL. (2 AA 340, art. 8.) They also state: "Any provisions found inconsistent with applicable laws will be considered invalid, however, will not diminish the applicability of all other sections." (2 AA 357, art. 21.9.) An argument could be made to interpret Article 20 and an addendum as an attempt to waive MRL

relocation benefits unless DHRG constructs a hotel development. (2 AA 354-355, 360; 3 AA 716.)

The LTRAs state that "Homeowner's tenancy will terminate no later than November 23, 2003. Homeowner hereby is given notice that [DHRG] intends to close the park on November 23, 2003. Subject to this Agreement, [DHRG] is giving up its right to close the park after giving one year's notice, and is instead giving in excess of fifteen (15) years notice. . . . Homeowner acknowledges that the current use of the Community by [DHRG] and Homeowner is inconsistent with the purposes of the trust for the lands upon which the community is located as stated in the statutes of California 1945, Chapter 142. The California Legislature, however, passed [the Kapiloff Bill] to allow DHRG to continue the present use of the land until November 23, 2003." (3 AA 716.)

At about the same time, DHRG forewarned the City that if the City did not approve DHRG's redevelopment plan, the City would be responsible for complying with the MRL, including the need to prepare a tenant impact report. (3 AA 544.)

In 1997, the City attempted to exempt the closure of De Anza Cove from its general ordinance which requires a relocation plan as a condition of a permit to close a mobilehome park. (3 AA 716, San Diego Mun. Code, §§ 143.0615(b), 143.0610.).)

In 1999 the City and DHRG entered into a memorandum of understanding allowing DHRG to negotiate with the City for potential redevelopment of De Anza Cove. (3 AA 716.) DHRG advised the City that a tenant impact report was advisable and offered to prepare and pay for the report. (*Ibid.*) The City instructed DHRG not to prepare an impact report. (*Ibid.*)

On November 15, 2002, DHRG's management agent sent notice to each De Anza Cove resident reaffirming the "legally mandated need to discontinue the residential use of [De Anza Cove] on November 23, 2003" and stating that "Management believes the expiration of [DHRG's] ground lease with the City and the expiration of your LTRA do not constitute a closure of the mobilehome park as defined by California law. Furthermore, Management is not proposing a change in use or closure of the mobilehome park and does not intend to prepare a tenant impact report as might otherwise be required if there was a change in use or closure. . . ." (3 AA 716-717.)

In May 2003, DHRG notified the City and the Park residents that DHRG had abandoned its efforts to develop a hotel. (3 AA 717.) The memorandum of understanding between DHRG and the City expired. (*Ibid.*)

D. The City Attempts To Remove all Residents from De Anza Cove

On September 15, 2003, DHRG sent to each resident a document entitled "Notice of Termination of Tenancy." (3 AA 717.) The document informed residents that "DHRG will not be renewing your LTRA or your mobile home tenancy after the expiration of the ground lease and your LTRA on November 23, 2003. . . . DHRG's ground lease to operate the property as a mobile home park will expire on November 23, 2003, your LTRA will expire on that date, and the use and operation of the property as a mobile home park cannot continue thereafter under current applicable State and City law." (*Ibid.*)

On October 22, 2003, the City threatened residents that they would be subject to eviction proceedings beginning November 24, 2003. (2 AA 462; 3 AA 717.) It informed residents that the City would take over operations and management of the mobilehome park from DHRG on November 23, 2003 and would soon make an offer as part of the "orderly departure of residents from the property." (2 AA 462.) As an alternative to eviction, residents could agree to City's forthcoming proposal. (*Ibid.*)

To "facilitate and fund the departure of the [De Anza Cove] mobile home residents, removal of the mobile homes . . ., return of [De Anza Cove] to its park and recreation use, and [for] settlement of any potential claims related to the cessation of recreational use . . .," the City Council

adopted resolution R-298609 on November 18, 2003. (3 AA 625.) In that resolution, the City declared it is the fee title owner of De Anza Cove. (*Ibid.*) The resolution declared the City was not responsible to comply with the MRL. (3 AA 633-636.) Then it appropriated $2 million of housing commission funds to implement a transition plan. (3 AA 635.)

No tenant impact report was provided and no relocation costs were tendered to any De Anza Cove owner or tenant. (3 AA 711.)

E. The City Enters into Agreements with Some Residents that Allow Continued Occupancy by Those Who Waive All MRL and Relocation Rights

The City entered into agreements with some owners of mobilehomes and residents of the De Anza Cove. (3 AA 718.) A recital asserts that in light of the expiration of the Master Ground Lease and LTRAs, the MRL "will no longer govern Residents' occupancy/possession of the Premises. (3 AA 638, ¶ C.) After recitals, the first term of each agreement makes it effective on a date borrowed from recitals. (3 AA 639, ¶ 1.) The first term of consequence sets a departure date.[2] (3 AA 639, ¶ 2(a).) The City agrees to continue renting the tenant's space to the tenant, and the tenant agrees to pay rent in a specific amount plus utilities charges. (3 AA 639, ¶ 2(b).) Next, the residents agree to remove the mobilehome and all other improvements from the rented space before the departure date. (3 AA 639,

[2] As developed at trial, departure dates range from Spring 2005 into 2008. (Tr. Exhs. 2050, et. seq.)

¶ 2(c).) The City agrees to exercise its sole discretion to determine whether the residents are entitled to economic assistance to comply with removal. (3 AA 639, ¶ 2(d).) The City agrees to pay $4,000 or $8,000 upon compliance with the removal.[3] (3 AA 639, ¶ 2(e).) The residents agree to pay any taxes resulting from their having a possessory interest in the rented property. (3 AA 643, ¶ C.2.) The residents release all claims against the City. (3 AA 641, ¶ A.1.) Because of the mixed terms of the agreements, this brief refers to them as settlement-rental agreements.

F. Facts Developed at Trial

Trial consisted of testimony of five expert witnesses and receipt of voluminous exhibits. The experts supplied a few additional historical facts, but their primary focus was to build each side's equivalent of an impact report.

1. Plaintiffs' Version of the Results of an Impact Report

James Brabant testified as an expert for plaintiffs. He is a highly qualified appraiser (19 RT 773-781, 792-796) with mobilehome park appraisal experience that goes back to 1979 (19 RT 781-790).

Brabant gave an opinion about how adverse impacts of closure should be compensated. (19 RT 799, 818-819.) He inspected De Anza Cove (19 RT 830.) He reviewed: the MRL; MRL implementing

[3] This was less than half the cost of removal (2 AA 300), a fact as to which the City claimed no knowledge (3 AA 581-582).

regulations of the cities of Laguna Beach, San Juan Capistrano, Huntington Beach, American Canyon, Santa Rosa, Santa Clarita, and San Diego; letters from the eight-year chair of the California Senate select committee on mobile and manufactured homes and a Legislature consultant in the field; City of San Diego memoranda; and declarations of real estate economist Gary London and mobilehome transporter Charles Green of November 2003. (19 RT 796-799; 20 RT 893-894.) He concluded that the appropriate methodology to determine relocation benefits was the "in-place market value of the homes, assuming continuation of the park in a safe, sanitary, and well-maintained condition. . . ."[4] (19 RT 799; see 19 RT 818-819.) Reasons specific to De Anza Cove why in-place fair market value should be part of compensation include the inability of owners to move their mobilehomes (19 RT 828-829; TE 112) and the lack of any comparable housing in nearby neighborhoods (19 RT 825-828; TE 113).

Brabant testified to his methodology for determining in-place market value. (19 RT 830-860; TE 157, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 184.) He produced reports

[4] The following local MRL implementation ordinances require compensation consisting of in-place fair market value with the same assumption of continuity Brabant used: Laguna Beach (19 RT 802-803; TE 97); San Juan Capistrano (19 RT 805; TE 98); Huntington Beach (19 RT 805; TE 99); American Canyon (19 RT 806-807; TE 100); Santa Rosa (19 RT 807; TE 101); Santa Clarita (19 RT 809-810; TE 185). See also 20 RT 1021-1022.

with market values for every home and space in De Anza Cove. (19 RT 848-849, 857; TE 164, 178.)

On cross-examination, Brabant acknowledged that market knowledge of impending closure of a park "destroys the values of homes in a park." (20 RT 877; see 20 RT 878, 928-929, 994 [applied to De Anza Cove].) His assumption of continuity was designed to exclude that reality from his appraisal because honoring that reality would make in-place valuation of immovable mobilehomes meaningless. (20 RT 879, 884-886, 994-995, 999, 1013.)

Brabant also acknowledged that his methodology could theoretically result in paying tens of thousands of dollars to a resident who bought a mobilehome for one dollar a few days before closure. (20 RT 879-880, 920.) Identifying any such actual people was outside his assignment. (20 RT 880-881.)

Phillip Schwartze, plaintiffs' second expert witness, testified about the adverse impacts of park closure and the resulting needs for relocation benefits, providing summary financial data that would populate a relocation impact report. (21 RT 1038, 1107.) He was qualified to do so. (21 RT 1039-1058, 1104-1107.) He also concluded that the mobilehomes physically cannot be relocated, and even if they could, there is no nearby park to which they could be relocated. (21 RT 1062-1065.)

The following constitute the basic elements of Schwartze's data: probable moving expenses (21 RT 1065-1067); a relocation coordinator to assist the residents in moving (21 RT 1067-1068); rent differential—the difference between the rent charged for the spaces in De Anza Cove and the rent for equivalent apartments nearby on a 48-month basis (21 RT 1060-1070); per diem lodging and related expenses during the move (21 RT 1071); and compensation to people with special needs like extreme age or disability (21 RT 1075). Adding Brabant's appraisal figures without modification, Schwartze presented all MRL relocation benefits on a space-by-space basis in two detailed spreadsheets. (21 RT 1077-1094, TE 186, 187.) Except for providing compensation for in-place market value, Schwartze's elements of required relocation benefits differ little from those of the City's expert. (21 RT 1101-1103.)

Schwartze agreed that as soon as a park closure date is announced, it causes a dramatic fall in the fair market value of any mobilehome in place. (21 RT 1120.)

Plaintiffs called a highly qualified economist, Patrick Kennedy, to verify that their proposed relocation impact conclusions were in line with the City's 1993 estimates of relocation impact mitigation it would owe, adjusted for time. (22 RT 1217-1242; TE 190.)

2. *The City's Version of the Results of an Impact Report*

The City called Larry Simon as its appraiser. (22 RT 1254-1265.) After testifying to his valuation methodology (22 RT 1268-1277, 1279-1283, 1285-1290), Simon concluded that the mobilehomes had zero to nominal value as of November 23, 2003 (22 RT 1278, 1308). First, no reasonable buyer would pay either a market or an in-place value for a home that the buyer had no future right to use since the park was closing. (*Ibid.*) Second, virtually all of the mobilehomes were worthless in place because of their age and exposure to marine conditions. (22 RT 1296-1307, 1331-1332.) Only about six mobilehomes had nominal value; they were less than 15 years old and might be structurally sound enough to be transported. (22 RT 1291, 1314-1315, 1332.) But even if the coaches could have been moved, they could not have been relocated in San Diego because of their age and the fact that local parks were full. (22 RT 1295.)

Simon acknowledged that his only assignment was to consider the move-out value of the coaches; he was not evaluating any of the adverse impacts caused by park closure. (22 RT 1333, 1364.) He acknowledged that the mobilehomes would have in-place value if De Anza Cove was not closing. (22 RT 1348.)

The City engaged Thomas P. Kerr as an expert witness to develop a methodology for the impact report for De Anza Cove. (23 RT 1374-1375,

1407-1408.) He offered a summary report at trial. (23 RT 1403, 1414; TE 1704.)

Kerr's experience with the mobilehome industry started in 1972, as executive director of the trade association for people who own, manage, and develop mobilehome parks. (23 RT 1378.) He then became a consultant to the mobilehome park industry. (23 RT 1379-1381.) He has owned and currently owns mobilehome parks, the overall total being 10. (23 RT 1382-1388; 24 RT 1529.) He publishes a monthly newsletter for owners, developers, and lawyers. (23 RT 1388-1389.) Kerr has prepared 10 impact reports for park closures. (23 RT 1392-1397, 1400-1404) Like Brabant, he relied on the London and Green declarations for foundational facts. (23 RT 1412.)

Kerr relied extensively on his interpretation of how the City's housing commission adopted its policy 300.401, trial exhibit 104, concerning the elements of relocation compensation under Municipal Code section 143.0610, the City's park closure ordinance. (23 RT 1430-1450.) The City's original policy for park closure mitigation required paying owners of immovable mobilehomes compensation that included seventy-five percent of in-place fair market value, appraised by assuming long term use in favorable conditions. (TE 105.) Policy 300.401, adopted by the City council, sitting as the housing commission in October 1995, does not mention any fair market value compensation. (23 RT 1451; TE 104.) Kerr

testified to a five year history in which the commission considered the issue but made no changes. (23 RT 1430-1447.) In June 1994, the City Attorney sent an opinion to the housing commission staff stating that if fair market value of a unit in place was interpreted to mean " 'in perpetuity,' " the mitigation could "be determined to be economically infeasible and confiscatory." (23 RT 1447-1448; TE 1704, p. 6.) That led in steps to the council action in 1995. (23 RT 1448-1451; TE 1704, pp. 7-8; TE 1766.)

Kerr then introduced an impact report prepared in a different city as a model for applying housing commission policy 300.401. (23 RT 1419-1420.) In 2005 and 2006, Overland, Pacific & Cutler (Overland) prepared for the park owner an impact report for closure of a mobilehome park in the City of La Mesa called La Mesa Terrace. (23 RT 1419-1420; TE 1741.) The park consisted of 25 spaces and an apartment. (*Ibid.*) Overland used the City housing commission policy as the base for its report because the City of La Mesa had no MRL implementation ordinance. (20 RT 910, 913; 23 RT 1419-1420; TE 1741.) No other impact, in the City or elsewhere, had ever been prepared under the City housing commission's policy. (20 RT 914; 23 RT 1419-1420.)

The La Mesa City Council did not limit compensation for adverse impacts to City housing commission policy. (24 RT 1562-1564; TE 193.) Rather, it required additional compensation based on valuation of each home on a square foot basis. (*Ibid.*; 20 RT 1018.)

Without personal analysis, Kerr adopted the perspective of the La Mesa Terrace draft report that the City housing commission policy is appropriate, and mobilehome park closure is not analogous to eminent domain taking. (23 RT 1422-1429.) In his opinion, the La Mesa Terrace impact report is an appropriate model for De Anza Cove because Overland used the City housing commission policy as the base for its recommendations and there is no other impact report for closing a mobilehome park near De Anza Cove. (23 RT 1419-1420, 1423.)

Except for in-place fair market value, Kerr had no substantial disagreements with Schwartze. (23 RT 1485-1486.) Kerr testified that chart 2 of his report, at pages 32 to 35 of trial exhibit 1704, reflects a literal application of the housing commission policy to De Anza Cove. (24 RT 1577-1578.) The court could have applied it to reach a final money judgment. (24 RT 1578.)

But in Kerr's opinion, even the housing commission policy can be too generous at an individual level. That is because Kerr interprets "reasonable costs of relocation," the maximum mitigation under Government Code section 65863.7, subdivision (e), to connote the reasonable costs of relocating a coach, even if the coach cannot be physically relocated. (23 RT 1492, 1498-1500, 1505.) He acknowledged it is infeasible to move the De Anza Cove coaches. (23 RT 1506.) In colloquy with the court, Kerr evaded addressing the difference between

relocating the coach and relocating the "household" when relocating the coach is infeasible. (23 RT 1492.)

STATEMENT OF THE CASE

A. Based on Causes of Action Alleged in the Original Complaint, the Court Enjoined Further Attempts to Close the Mobilehome Park

The Association as a representative of owners and residents sued the City in November 2003 (1 AA 1, 21.) The multiple-count complaint included a cause of action for violation of the MRL. (1 AA 6-8.)

The superior court preliminarily enjoined the City from using unlawful detainer proceedings or other legal process to evict residents and owners. (1 AA 25-29.) The court also restrained the City from terminating any services or closing any common areas. (1 AA 29.)

Shortly after entry of the preliminary injunction, the Association filed a first amended complaint to assert claims based on the City's retaliation against residents who asserted rights under the MRL. (1 AA 30-35.) In ruling on the City's demurrer, the court terminated without leave to amend the Association's cause of action for violation of the California Constitution. (1 AA 53-55.) After that ruling, the Association filed a second amended complaint. (1 AA 56.)

In February 2005, the parties stipulated with court approval to stay the action. (1 AA 76-81.) The primary purpose of the stay was to allow Overland, with City funding, to prepare a tenant impact report that could be

the basis for settlement. (1 AA 77-78.) The City never prepared the report, so the litigation resumed. (15 RT 508.)

B. Plaintiffs File the Operative Third Amended Complaint Adding Individual Class Representatives; the Court Modifies the Preliminary Injunction

In August 2005, plaintiffs filed their third amended complaint (TAC) in which seven owners and residents joined as individual class representatives. (1 AA 84-86.) The TAC made specific class action allegations and suggested subclasses of people entitled to compensation from the defendants. (1 AA 96-99.)

As factual allegations common to all claims for relief, the TAC alleged a summary of the facts set forth in parts A through E of the Statement of Facts, *ante*. (1 AA 88-94.) The TAC also alleged that the City harassed De Anza Cove residents to coerce them to leave the park. (1 AA 94-95.) Among the acts of harassment were physical takings of residents' property: impounding all items from residents' storage areas; impounding residents' cars, trucks and trailers; destroying residents' storage facilities. (*Ibid.*) The TAC alleged timely presentation of claims to the City. (1 AA 94-95.)

For a first cause of action, plaintiffs alleged that the City violated the MRL, including Government Code section 65863.7. (1 AA 99-103.) Among the specific violations, the City failed to prepare a tenant impact

report and failed to provide any benefits to mitigate the adverse impact of closing De Anza Cove. (1 AA 100-102.) The TAC alleged that the protections of the MRL could not be waived by any tenant contract. (1 AA 101-102.) For relief, the TAC pled, among other things, rights to damages, statutory penalties, attorney fees, and an injunction requiring the City to comply in full with the MRL, including preparing a tenant impact report and providing compensation to mitigate the expenses resulting from closing De Anza Cove. (1 AA 102-103, 119-120.)

The third cause of action alleged that the City breached a mandatory duty and was liable under Government Code section 815.6 by committing all the acts alleged in the TAC without complying with the MRL. (1 AA 105.)

The fourth cause of action of the TAC alleged that the City inversely condemned personal property of the plaintiffs and class members, including by damage and destruction. (1 AA 106.)

The fifth cause of action of the TAC alleged that the closure of De Anza Cove was a program or project undertaken by the City, as defined in Government Code section 7262, a part of the California Relocation Assistance Law (CRAL). (1 AA 107.) The TAC alleged that owners and residents were to be displaced by the program or project and therefore were entitled to all remedies provided by the CRAL. (*Ibid.*)

The sixth cause of action of the TAC alleged that the City's conduct deprived the plaintiffs of both equal protection and due process of law under article I, section 7(a) of the California Constitution. (1 AA 107-109.) Specifically, the attempt by the City to exempt De Anza Cove from Municipal Code section 143.0610, the City's park closure ordinance, is an invalid classification for equal protection purposes and a violation of due process rights. (1 AA 108-109.)

In October 2005, the court modified the injunction to protect owners and residents from conduct of the City and its agents that could have impaired owners' and residents' rights under the MRL. (1 AA 146-152.)

C. The Order Sustaining the City's Demurrer to the Third Amended Complaint Eliminates Many Causes of Action Leaving only Violation of the MRL and Breach of Mandatory Duty for Trial

The City demurred to plaintiffs' inverse condemnation cause of action on the ground that its steps to close De Anza Cove did not constitute a taking because the City had not appropriated any property for a public use. (1 AA 138-139.) Plaintiffs opposed the demurrer on the ground that the City had caused physical damage to personal property, including mobilehomes. (1 AA 160-161.) Plaintiffs also advanced the theory that the City committed a taking by adopting a plan that requires destruction of mobilehomes that could not be relocated. (1 AA 161.) At the hearing on the demurrer, plaintiffs' counsel represented that the City had caused more

than 100 mobilehomes to be removed from the park and destroyed. (1 RT 22-23.) The court sustained the demurrer without leave to amend. (1 AA 184.)

As to plaintiffs' CRAL cause of action, the City contended that the expiration of the De Anza Cove ground lease was the cause of the plaintiffs' displacement and therefore the residents were not displaced persons as defined in the CRAL. (1 AA 140-142.) The City relied on *Stephens v. Perry* (1982) 134 Cal.App.3d 748. (*Ibid.*) Plaintiffs opposed the demurrer on the ground that a 1989 amendment expanded the scope of the CRAL made them displaced persons for reasons that could not have been considered seven years earlier in *Stephens*. (1 AA 162-163.) The court sustained the demurrer without leave to amend. (1 AA 184.)

The City demurred to the constitutional causes of action on the ground they had been dismissed without leave to amend in a prior demurrer ruling and they were, as adjudicated in that ruling, merely repetitive of elements of the cause of action based on the MRL and insufficient to show *the Association* was a member of a suspect class. (1 AA 142-143.) Plaintiffs explained that while the Association's claim may have been terminated, the individuals in both their own capacity and as representatives were not parties to the case when the court made the prior ruling. (1 AA 166-168.) The court sustained the demurrer without leave to amend on the

ground that the individuals "failed to allege that they are members of a protected class entitled to strict scrutiny." (1 AA 184.)

D. The Court Certifies a Class Consisting of All Owners and Residents in De Anza Cove as of October 22, 2003

In October 2006, the court certified the action as a class action. It defined the class as: " 'All homeowners, tenants and residents of the approximately 509 homes located within the mobilehome park now known as Mission Bay Park and formerly known as De Anza Harbor Resort . . . on October 22, 2003.' " (1 AA 196-197.)

E. The Court Grants Summary Adjudication that the MRL Applies to the City and De Anza Cove, the City Has a Mandatory Duty To Comply with the MRL, and the City Violated the MRL

In April 2007, the court granted plaintiffs' motion for summary adjudication that the City had—and breached—a duty to comply with the MRL. (3 AA 709-723.) Specifically, the court ruled:

"a. 'De Anza Cove is a mobilehome park and the [MRL] applies in full to De Anza Cove and the City of San Diego;

"b. 'The City of San Diego is under a mandatory duty to comply with the [MRL and Government Code section 65863.7], which regulate closure of De Anza Cove, the timing and content of [n]otices to residents, and tenant-impact-reporting and relocation assistance requirements;

“c. ‘The City violated the [MRL], Civil Code [section 798.56, subdivisions (g) and (h) and Government Code section 65863.7] by failing to prepare a tenant impact report and serve lawful [n]otices that complied with the MRL’s timing and content requirements.’ ” (3 AA 711.)

Further, the waivers of relocation benefits contained in the LTRAs are void under Civil Code section 798.77. (3 AA 719.)

The court denied the element of plaintiffs’ motion seeking an adjudication that the waiver of relocation benefits in the settlement-rental agreements between the City and some class members was void as a matter of law. (3 AA 719.) Plaintiffs contended the waiver was void because rental agreements could not contain any enforceable language waiving MRL relocation benefits. (1 AA 207, 242-243.)

The court next conducted a status conference to discuss the implications of the summary adjudication order on the class definition and the issues presented for trial. (11 RT 351-374.) The City contended trial would be premature because a tenant impact report must be prepared first. (11 RT 357, 365.) It claimed that only by the court’s summary adjudication did it come to know that the MRL applied to it and De Anza Cove; as a result it needed time to decide whether to close the park and proceed under the MRL. (11 RT 364, 369, 371-373.) The court made no decisions at the status conference. (11 RT 374; 3 AA 818.)

F. The Court Redefines the Class and Further Elaborates the Summary Adjudication Order

Nearly a month after the status conference, the court issued its first amendment of the class definition in the same order with an elaboration of its summary judgment ruling. (3 AA 820-828.)

1. First Amended Class Definition

The court amended the definition of the class: " 'All persons who were homeowners and/or residents on October 22, 2003 and currently remain homeowners and/or residents of the mobilehome park now known as Mission Bay Park and formerly known as De Anza Harbor Resort . . . and who have not entered into settlement agreements.' " (3 AA 822.) This amendment embodied two exclusions. First, the court excluded people who had no continuing relationship with De Anza Cove, whether they departed voluntarily or involuntarily. (3 AA 821.) Second, the court excluded people who signed settlement-rental agreements with the City. Its rationale for excluding both groups was that including either could render the action vulnerable to decertification. (*Ibid.*)

2. Elaboration of Summary Adjudication and Definition of Issues for Trial

The court rejected plaintiffs' theory that inverse condemnation provided an analogy to the MRL and created a right to legal damages. (3 AA 822.)

The court also rejected the City's theory that De Anza Cove remained open and did not have a closure date. (3 AA 822.) It concluded that the City Council's resolution R-298609 on November 18, 2003, together with its 1982 acceptance of the Kapiloff Bill amounted to a closure effective November 23, 2003. (3 AA 823.)

Finding that the City had effected a closure and made a knowing and express decision to do so without issuing a tenant impact report, the court concluded that the judiciary had become the appropriate branch of government to determine relocation benefits. (3 AA 823-826.) The City was the person proposing to change the use of De Anza Cove and was therefore responsible under Government Code section 65863.7 to prepare the report on steps necessary to mitigate the adverse impact of the change. (3 AA 823-824.) By accepting the Kapiloff Bill, the City opted to gain rental income from the park operator for 15 years rather than terminate the use in 1988 and pay relocation costs to residents. (3 AA 824.) As part of that process, the City renegotiated the Master Ground Lease to increase the City's rental income substantially. (3 AA 824-825; see 3 AA 718.) Therefore, the City understood the requirement to pay relocation costs to displaced tenants before the tenants entered into the LTRAs. (3 AA 825.) The City exempted De Anza Cove from its own mobilehome relocation ordinance. (*Ibid.*) And in resolution R-298609, the City knowingly and expressly determined to proceed with eviction of all tenants and cessation

of all residential use, *without a tenant impact report and without relocation benefits*, offering only the settlement-rental agreements in lieu. (3 AA 825-826.) "Thus, the City actively investigated, discussed and considered the preparation of a tenant impact report and the payment of relocation costs and chose to do neither. The City may not at this time be heard to argue that the Court lacks the authority to determine these issues." (3 AA 826.)

The court concluded that it was required to try the plaintiffs' claims for mitigation benefits under Government Code section 65863.7, prejudgment interest on mitigation benefits, and statutory penalties under Civil Code section 798.86. (3 AA 826.) The court interpreted the remedies as discretionary and equitable, and therefore the matter was for court trial, not jury trial. (3 AA 827.)

3. Second Amended Class Definition

At a status conference on class notice, the court concluded that "former homeowners or residents and their heirs who resided at the park on October 22, 2003 and who have voluntarily vacated the premises without entering into a settlement agreement should be included in the class." (3 AA 832; see 13 RT 437-439; 12 RT 405 [City concedes heirs]; (4 AA 824) [reconfirmed, includes residents forcibly displaced without legal process] class notice .) Persons evicted by unlawful detainer actions remain excluded. (*Ibid.*)

4. Unanimous Understanding of the Nature of the Upcoming Judge Trial on the Amount of Benefits

The record of an August 2007 status conference demonstrates that both sides intended to try the amount of relocation compensation to the court, class member by class member. (15 RT 493-494 [plaintiffs], 496-497 [City], 499-500 [City], 508 [City].) The court reiterated that it would be the trier of fact without a jury (15 RT 512) and the point of the trial would be to reach a dollar amount of mitigation (15 RT 524).

G. The Court Tries What Appeared To Be the Class Members' Relocation Benefits

1. From Beginning to End, the Trial Was To Set Monetary Benefits, and the City Closed with Key Admissions about Methodology

At the beginning of trial, the City admitted that the De Anza Cove mobilehomes cannot be moved. (19 RT 758.) The City represented that the people associated with 296 mobilehomes are part of the class; 322 people associated with 188 mobilehomes had signed settlement-rental agreements; and 19 mobilehomes had been emptied by eviction in authorized unlawful detainer cases. (19 RT 769.) Although later issues of proof developed concerning some settlement-rental agreements and evictions, the court did not adjudicate those issues, and the City's representation offers a ballpark understanding of the status of De Anza Cove and its residents.

In closing, the City made key admissions:

► "[W]e're here to determine under Government Code Section 65863.7(e) what is necessary to mitigate the adverse impact of relocation, which is limited by state law not to exceed the reasonable costs of relocation." (25 RT 1687.)

► "And more importantly, we believe, the City, that the city *ordinance* is the correct guideline to follow. . . ." (25 RT 1707 [italics supplied], see 1708.)

► Kerr's "[r]eport number two shows strict compliance with the city guidelines, and the La Mesa report shows what happens after you go through the normal legislative process. . . ." (25 RT 1712.)

► "We are suggesting that [the La Mesa Terrace report] is the approach that this Court should take in this particular action. We are not saying that you should use the initial recommendations in the tenant impact report. We are saying that you should use the final resolution which is in Exhibit 193 that was determined after the legislative process. . . ." (25 RT 1714.)

2. The Process of Reaching a Statement of Decision and Entering the Appealed Order After Statement of Decision

The trial concluded November 13, 2007, but the court did not take the matter under submission because voluminous exhibits—the details for adjudicating disputed settlement-rental agreements and evictions—remained to be delivered in the format requested by the court. (15 RT

1744-1745; 4 AA 910.) The court and parties confirmed what exhibits had been received in evidence at a December 13, 2007 hearing. (16 RT 1746-1766.)

At a February 21, 2008 conference, the court reported that the matter was submitted December 18, 2007. (4 AA 914.) The court discussed tentative conclusions it had reached on the merits of the case and projected that it would file a decision in the first week of March. (27 RT 1769-1784.) The court commented that it had expected the trial would be presented as if the parties were delivering a tenant impact report to the court sitting in the position of a city council. (27 RT 1771.) The court had tentatively rejected both the plaintiffs' in-place market appraisal approach and Kerr's rent differential theory. (27 RT 1772-1779.) For the first time, the court suggested requiring the City to cause a professional tenant impact report to be prepared, subject to review by special masters and then the court rather than the City because of the City's inherent conflict of interest. (27 RT 1780-1784.)

On March 7, 2008, the court issued its tentative decision. (4 AA 917.) The tentative decision referred to an Order After Decision, filed the same date, compelling the City to prepare a tenant impact report

for submission to special masters for review.[5] (4 AA 930-931.) The court noted that at trial it was "called upon to decide what money and what assistance would be necessary to help mitigate the impact of the park's closure upon the homeowners and tenants." (4 AA 922.) The tentative decision stated it would become a statement of decision if neither party made a timely request for a formal statement of decision. (4 AA 930-931.) The clerk did not mail the statement of decision until March 10, 2008. (28 RT 1797.) The city requested a statement of decision. (4 AA 939-940.) On March 25, 2008, plaintiffs timely made a written request for a statement of decision. (4 AA 955-969; see Code Civ. Proc., §§ 662, 1013, subd. (a).) Plaintiffs also filed a proposed statement of decision. (4 AA 970-983.)

On May 21, 2008, the court issued its statement of decision and Order After Statement of Decision (Order). (4 AA 1022-1042.) Plaintiffs timely filed objections on June 5, 2008. (4 AA 1043-1051.)

[5] On May 1, 2008, the court confirmed that the March 7 Order After Decision was erroneously titled because the document was, by its express terms, based on provisional findings in the tentative decision. (29 RT 1823-1824; 4 AA 1020.) The purpose of the order was to clarify the court's intended purpose as stated in the tentative decision. (*Ibid.*)

H. The Statement of Decision and Order Resolve Some Relocation Benefits Issues, Enjoin the City To Prepare a Tenant Impact Report, and Establish a Process for Two Referees To Review a Tenant Impact Report

1. The Statement of Decision

The statement of decision began by repeating most of the summary judgment findings about the history of De Anza Cove. (4 AA 1022-1024.)

The court then rejected the City's argument that the court should "refer the entire matter back to the City" to prepare a tenant impact report. (4 AA 1025.) The City is the owner-operator of De Anza Cove, and the City both failed to "prepare and timely serve" the required report and "failed to take steps to mitigate the economic impact of closure on park residents." (*Ibid.*) Accordingly, referring the adjudication of benefits to the City "would result in an untenable conflict of interest." (*Ibid.*) If it were the adjudicator, the City would have to perform an impartial evaluation of the sufficiency of the report itself and the sufficiency of mitigation. (*Ibid.*) "The conflict of interest is clear, for during the past twenty-one years the City has taken a resolute and unyielding position regarding De Anza that no mitigation of economic harm whatsoever is required." (*Ibid.*) The City itself demonstrated the conflict by passing an ordinance exempting De Anza Cove from the generally applicable local mobilehome regulations. (*Ibid.*) And after the court restrained the City from evicting occupants, the City tried to drive them out with such tactics as towing automobiles,

demolishing laundry facilities, demolishing a playground, and installing klieg lights. (4 AA 1026.)

Instead of deciding the compensation of each class member from the evidence at trial, the court transferred the process of making a decision to an analog of the tenant impact report process. (4 AA 1027.) The court stated it would require the City to prepare a tenant impact report for review by two special masters and then review by the court. (4 AA 1027, 1032.) It relied on the prayer of the TAC for an injunction as the basis for that process. (4 AA 1032.) The court limited the statement of decision to issues of the methods to be used in the report and by the masters. (4 AA 1028-1036.)

The most important question resolved in the statement of decision is the valuation base for determining relocation cost. The court reviewed plaintiffs' evidence that a strong majority of California cities with MRL implementation ordinances use in-place fair market value as the valuation base. (4 AA 1030.) It acknowledged plaintiffs' expert testimony supporting in-place fair market value as the base. (4 AA 1031.) It identified two cities, San Diego and Anaheim, that use other methods to determine relocation benefits. (*Ibid.*)

The court rejected in-place fair market value. (4 AA 1031.) First, it concluded that the City is not bound to adopt methods adopted by other cities. (*Ibid.*) Second, it concluded that in-place fair market value was not

warranted for De Anza Cove because the mobilehome park is situated on tideland, and using in-place fair market value would be "the functional equivalent of requiring the City to purchase State property." (*Ibid.*)

Instead, the court concluded that the City must apply its own generally applicable relocation ordinance to De Anza Cove. (4 AA 1032-1033.) As a means of implementing the ordinance, the court directed that the report be prepared under the methodology of the *draft* La Mesa Terrace report. (4 AA 1033.) At the report stage, this had the effect of eliminating the supplementary payment schedule required by the City of La Mesa in connection with the closure of the La Mesa Terrace park.[6] (*Ibid.*) The court specified some details for applying the draft La Mesa Terrace report to three subclasses, which were neither part of the housing commission policy nor part of the La Mesa Terrace report: renters who do not own their mobilehome residences; owners whose mobilehomes can be relocated; and resident owners whose mobilehomes cannot be relocated. (4 AA 1034-1035.) Anyone else claiming to be a class member is not entitled to compensation, and specifically nonresident owner-lessors whose mobilehomes cannot be relocated are not entitled to any benefits. (4 AA 1035-1036.)

[6] It is not clear that the court foreclosed the masters from recommending, or itself from granting, additional compensation in equity parallel to that granted by the City of La Mesa in the final report. (4 AA 1027.)

The statement of decision left the issue of statutory penalties for consideration after the tenant impact report process. (4 AA 1036.)

2. The Order

Stripped of all-caps typography, the Order provides: "The Court hereby orders: [¶] The City of San Diego to prepare, file and serve a formal Relocation Impact Report as required by the Mobilehome Residency Law set forth in Civil Code Sections 798-799.8 and California Government Code section 65863.7 which shall fully address the impact of the closure upon the residents and shall be consistent with the provisions of State law as interpreted by the Court in its findings and this Order." (1 AA 1039.) The court ordered the City to comply with the MRL because the court found "legally ineffective" the City's attempt to exempt plaintiffs from the City's own mobilehome park closure ordinance. (3 AA 711, 718-719; 4 AA 1026-1027, 1039.)

The Order and its accompanying statement of decision change the MRL process. The statement of decision concludes that "mitigation of economic hardship . . . will ultimately be addressed by this Court following a review and recommendation by Special Masters Ordered pursuant to Code of Civil Procedure section 639. . . ." (4 AA 1027.) The court contemplated that the masters would review the relocation impact report prepared by the City and then prepare recommendations and proposed orders to the court for final decision. (*Ibid.*) "The Special Masters will also

consider evidence and submit recommendations to this Court regarding a comprehensive Relocation Plan to assist park residents who have special medical needs or residents who may have other particularized needs regarding relocation." (4 AA 1027-1028.)

The Order finds "the exceptional circumstances of this case, including the complexity of issues and the large number of affected parties, requires a Court ordered reference pursuant to Code of Civil Procedure section 639 et seq." (4 AA 1040.) It ordered the parties to meet and confer regarding selection of the masters and ordered the City to pay all costs of the masters. It granted the masters the powers contemplated by the statement of decision and also gave them the power and duty "to oversee the implementation of the Relocation Plan to bring closure to the Park and periodically report to the Court and provide the Court with recommendations and any proposed Order(s) necessary to implement the Relocation Plan." (*Ibid.*)

I. Plaintiffs Appeal

Plaintiffs timely appealed the Order on July 18, 2008. (4 AA 1052.) There is no cross-appeal.

ARGUMENT

I.

THE COURT HAS JURISDICTION; ALTERNATIVELY, THE COURT SHOULD RESOLVE THE MERITS BY WRIT REVIEW

A. Appealability

Code of Civil Procedure section 904.1, subdivision (a) provides in pertinent part: "An appeal, other than in a limited civil case, may be taken from any of the following: . . . (6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." (Code Civ. Proc. § 904.1, subd. (a)(6).) The notice of appeal was filed within 60 days of entry of the Order and therefore is timely regardless of whether notice of entry was served. (Cal. Rules of Court, rule 8.104(a).)

An order granting a permanent injunction is immediately appealable, even if it is made in a case in which further proceedings will be tried between the same parties. (*Cabrini Villas Homeowners Assn. v. Haghverdian* (2003) 111 Cal.App.4th 683, 688 [after bifurcated trial of a cause of action for injunction, with another cause of action still pending, an order granting a permanent injunction was appealable under Code Civ. Proc., § 904.1, subd. (a)(6)]; *Meehan v. Hopps* (1955) 45 Cal.2d 213, 215 [order enjoining counsel from further participation in the case, although the

court may have meant it as a case management order in the court's inherent power, was in fact an injunction].)

Alternatively, plaintiffs ask the merits panel to exercise its discretion to treat this brief as a writ petition if it finds an absence of true appellate jurisdiction. (*Olson v. Cory* (1983) 35 Cal.3d 390, 400-401.) All the right factors are present: an order by the superior court exceeding its jurisdiction, irreparable harm (unrecoverable waste of judicial and party resources), and the superior court's participation is not more than as a nominal party. (*Ibid.*)

Appealability is more extensively discussed in plaintiffs' opposition to the City's motion to dismiss the appeal, which the Presiding Justice referred to the merits panel.

B. Reviewable Issues

Given that the order is appealable, the court may review any "intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party. . . ." (Code Civ. Proc., § 906; see *Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 330 [review of judgment after order granting partial new trial].) The City's right to seek review of such matters is limited to "the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies. . . ." (Code Civ. Proc., § 906.)

II.

THE COURT MADE MULTIPLE ERRORS LEADING UP TO APPOINTING REFEREES TO REVIEW A TENANT IMPACT REPORT

A. The MRL Uniquely Protects Mobilehome Owners and Park Residents from a Dysfunctional Housing Market

Mobilehome is one of the worst misnomers in American language, and understanding the misnomer opens a window on a dysfunctional sector of the housing market. When new, a mobilehome is a form of manufactured housing that can be towed into place on its own wheels. But once placed, a coach rapidly loses mobility. Here, the parties agree that the mobilehomes at De Anza Cove could not feasibly be moved when the park closed. (19 RT 758; 21 RT 1062-1065; 22 RT 1296-1307, 1331-1332.) Lack of mobility and space scarcity make the mobilehome park industry a platform for abuse. Basically, coach owners own homes on land they rent. If park spaces were abundant and coaches were mobile, market forces would assure reasonable exchanges of value between homeowners and park owners. But shortage of park spaces and immobility deliver park owners immense economic leverage.

Failure of market principles drove the Legislature to enact the MRL to protect mobilehome coach owners from park owners' exercise of leverage against their homes. The codified statement of intent in Civil

Code section 798.55 so declares: "The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter." (Civ. Code, § 798.55, subd. (a).) "This chapter" is division 2, part 2, title 2, chapter 2.5 of the Civil Code, the MRL. (Civ. Code, § 798; Stats. 1978, ch. 1031, § 1, p. 3178; Stats. 1979, ch. 493, § 1, pp. 1662-1663.)

The unique protection of mobilehome owners begins with prohibiting the park from ending the homeowner's right to a rental space except in precisely codified circumstances. "The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to sell or remove, at the homeowner's election, the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice." (Civ. Code, § 798.55, subd. (b)(1).) "This article" is article 6 of the MRL. (Stats. 1978, ch. 1031, § 1, p. 3181.) The next section in article 6, Civil Code section 798.56, is the only section of the MRL that allows termination or nonrenewal of a tenancy, and it specifies seven

permissible reasons. Four of the reasons involve illegal or other improper conduct of or attributable to the mobilehome owner. (Civ. Code, § 798.56, subd. (a)-(d).) The fifth is nonpayment of rent. (*Id.*, subd. (e).) The sixth is condemnation of the park. (*Id.*, subd. (f).) The last is change of use of the park, but only if specific conditions are met. (*Id.*, subd. (g).)

Specifically, Civil Code section 798.56, subdivision (g), imposes five conditions on management of a park to end a homeowner's tenancy for change of use. One is pertinent here. Subdivision (2) requires management to "give the homeowners six months' or more written notice of termination of tenancy" commencing after the last of any local governmental permits required to allow the change of use. Alternatively, "[i]f the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur." (Civ. Code § 798.56, subd. (g)(2).) Subdivision (h) imposes a sixth condition. "The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section." (Civ. Code, § 798.56, subd. (h).) The Legislature added the cross-reference in 1988 (Stats. 1988, ch. 301, § 2.5, p. 1030), although the Government Code requirement for an impact report had existed for eight years (Stats. 1980, ch. 879, § 2, p. 2760).

Government Code section 65863.7 provides for mitigation of the adverse effects of a park change of use. The version in force from 1991 through 2003 required a park operator—before changing the use of a mobilehome park—to file with the appropriate local planning and zoning agency "a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed."[7] (Stats. 1990, ch. 1572, § 11, p. 7497 [subd. (a)].) Then: "The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation." (*Id.*, p. 7497 [subd. (e)].) The legislation explicitly

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[7] Subdivision (a) of the 1990 version provided in full:

> Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

applies to charter cities. (*Id.*, p. 7497 [subd. (h)].) Later amendments made no material changes. (Stats. 2004, ch. 680, § 1; Stats. 2007, ch. 596, § 4.) Subdivision (i) then provided and now provides terms to close any loophole when change of use results from governmental entity actions or indecisions. (Gov. Code, § 65863.7, subd. (i).[8])

The core elements of the unique protection of mobilehome park residents relevant to this case come down to:

- Limiting the park owner's property right to remove residents (Civ. Code, § 798.55);
- Giving long notice (Civ. Code, § 798.56, subd. (g)(2));
- Requiring the proponent of change of use to deliver an extensive report on the adverse impacts when it gives the long notice (Civ. Code, § 798.56, subd. (h); Gov. Code, § 65863.7, subd. (e));

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[8] The full text of subdivision (i) states:

> This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

- Providing for the proponent of change of the park's use to compensate residents for the adverse impact of the change, not to exceed "the reasonable costs of relocation" (Gov. Code, § 65863.7, subd. (e); see *id.*, subd. (i).).

Neither "adverse impact" nor "reasonable costs of relocation" is defined in the MRL or in Government Code section 65863.7.

B. Compensation for Adverse Impacts of Closure Is Mandatory

1. The City Could Not Exempt Itself from the MRL and Its Own Mobilehome Relocation Ordinance

The City's mobilehome ordinance makes compensation for adverse impacts of closure mandatory. The code comprehensively requires a permit for a change of use. (San Diego Mun. Code, § 143.0610.) It recites in plain English that tenant relocation assistance is mandatory whenever mobilehome park use is converted to another use: "These regulations are intended to benefit the general public by minimizing the adverse impact on the housing supply and on displaced persons by providing certain rights and benefits to tenants and by requiring tenant relocation assistance whenever an existing mobilehome park or portion thereof is converted to another use." (*Ibid.*) The code specifically requires any proponent of changing use to apply for a permit for the change. (San Diego Mun. Code, § 143.0630(a).) The proponent must file a relocation plan when it files the

application. (*Id.*, § 143.0630(c).) "The relocation plan shall provide for the relocation of the tenants who will be displaced by the discontinuance of the use of the property as a mobilehome park or by the conversion of mobilehome spaces to other uses." (*Ibid.*) Further: "The application for discontinuance of a mobilehome park shall not be approved until a relocation plan has been approved by the San Diego Housing Commission." (*Id.*, § 143.0630(d).)

Early in this case, the City argued that it exempted its obligations to De Anza Cove residents from the MRL. Specifically, the City tacked this provision onto Municipal Code, section 143.0615: "Notwithstanding any other provision in this section to the contrary, this division does not apply to the mobilehome park located in Mission Bay Park generally known as De Anza Mobilehome Park. It is the intention of the City to deal with any discontinuance and relocation issues involved with De Anza Mobilehome Park by separate ordinance or resolution because of the unique conditions applicable to the De Anza Mobilehome Park." (San Diego Mun. Code, § 143.0615(b).) Resolution R-298609 constituted the "separate ordinance or resolution," reiterating that the MRL does not apply to De Anza Cove.

In the summary adjudication order, the superior court rejected the City's theory and held that the exception and resolution R-298609 violated the MRL. (3 AA 711.) The City recognized at trial that the summary adjudication order left it subject to its own ordinance; it argued that the

measure of compensation should be determined by housing commission policy adopted under authority of that ordinance. (25 RT 1707-1708; see San Diego Housing Com. Policy 300.401 [TE 104].)

Even if it wanted to, the City could not retrench in this appeal because it filed no cross-appeal. Like any other party, a public agency fails to invoke the jurisdiction of the Court of Appeal to review alleged error when it fails to cross-appeal. (*Nevada County Office of Education v. Riles* (1983) 149 Cal.App.3d 767, 779.)

Parenthetically, if the City attempted to retrench, it would be wrong. The City has no power to pass local legislation exempting itself from statewide laws on matters like housing and land use that affect more than local issues. (See, e.g., *CEEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 321 [upholding validity of Coastal Zone Conservation Act of 1972].) The superior court correctly concluded that neither the MRL nor the Kapiloff Bill contains any exception for either municipally owned mobilehome parks or De Anza Cove specifically. (Stats. 1981, ch. 1008; Civ. Code, §§ 798.55, 798.56; Gov. Code, § 65863.7.)

2. The MRL Makes Compensation Mandatory

Had the City not made compensation mandatory within its territory, an issue could arise whether "may" in Government Code section 65863.7, subdivision (e) makes compensation for the adverse impacts of

mobilehome park closures discretionary. Despite the usual permissive meaning of "may," the MRL should be interpreted to make compensation mandatory.

First, the court should grant some deference to the unanimous local ordinances[9] interpreting Government Code section 65863.7, subdivisions (e) and (i) to require compensation, just as it would defer to the interpretive rules of an administrative agency charged with enforcement of a statute. (See, e.g., *Yamaha Corp. of America. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-14 [deferring to the State Board of Equalization]; *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1012-1014 [deferring to the Judicial Council].) Here, the Legislature charged local government agencies with enforcement. (Gov. Code, § 65863.7, subd. (e).) Deference is appropriate to the local interpretations under the two classes of factors that the California Supreme Court recognizes for deference to administrative interpretation: factors indicating that an agency's expertise gives it a " 'comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' "

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[9] See, e.g., Santa Clarita Mun. Code, § 6.04.070(B)(5) [TE 185]); Laguna Beach Mun. Code, § 1.11.001 et seq. [TE 97]; San Juan Capistrano Mun. Code, §§ 9.2.331(c)(2)(L), 9.2.331(k)(7)-(8) [TE 998]; Huntington Beach Muni. Code § 234.08(A)(1), (2) [TE 99]); American Canyon Mun. Code, § 19.32.060(F) [TE 100]); Santa Rosa Mun. Code, § 6-67.030(D)(12) [TE 101]); Los Gatos Mun. Code, § 29.20.825(4)(a), 29.20.835(2)(k) (TE 2409); see also Chula Vista Mun. Code, § 9.40.010 [TE 2410].

(*Yamaha*, 19 Cal.4th at p. 12.) Local agencies have expertise in housing needs and markets that give them, collectively, a comparative advantage over courts in understanding what the Legislature meant in the MRL's relocation requirements. The unanimous agreement is likely to be correct because it represents careful consideration over a long period of time by multiple agencies with no axe to grind, and on the requirement for some compensation it even includes the City. (San Diego Mun. Code, § 143.0610 et seq.)

C. The Judicial Forum Is the Proper Forum To Fix Compensation for Adverse Impacts of Closing De Anza Cove

The City has contended that determining residents' compensation for the adverse impacts of closing De Anza Cove is a matter for the city council. As with the ordinance exemption argument, it is sufficient to the Court of Appeal's decision that the superior court disagreed (4 AA 1025-1027, 1032-1033; 27 RT 1779-1780) and the City did not cross-appeal (*Nevada County Office of Education v. Riles*, *supra*, 149 Cal.App.3d at p. 779). But plaintiffs will also show in this part that the City's attempt to decide the relocation rights of residents of its own mobilehome park violated basic due process principles; plaintiffs are entitled to a decision from a branch of government that is not corrupted by the fact that it must pay whatever compensation it orders.

In *Tumey v. Ohio* (1923) 273 U.S. 510 (*Tumey*), the United States Supreme Court held that due process of law under the Fourteenth Amendment forbids financial conflicts of interest when local agencies decide citizens' rights. (273 U.S. at p. 523.) In *Tumey*, the state allowed towns to finance the prosecution of liquor possession offenses by fines from people convicted of the offenses. (*Id.* at p. 517.) The mayor of the town, acting as town judge, decided charges of illegal liquor possession. (*Ibid.*) And the mayor recovered his costs of presiding if he convicted the accused. (*Id.* at p. 520.) The Supreme Court held that both the mayor's personal pecuniary interest and the mayor's interest as an executive in promoting the town financing scheme independently violated due process. (*Id.* at pp. 532-534.) Fifty years later, the Supreme Court reaffirmed that a mayor's interest as a town executive in the revenue generating aspects of a mayor's court, even in the absence of any personal pecuniary interest, violates due process. (*Ward v. Village of Monroeville* (1972) 409 U.S. 57, 60-61; see *Gibson v. Berryhill* (1973) 411 U.S. 564 578.) Relying substantially on *Tumey*, the California Supreme Court held that the financial conflict of interest rules that apply to judicial tribunals apply equally in administrative proceedings. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1024-1025 [county may not hire administrative law judges on an ad hoc basis because the judges then depend on pleasing the

county to obtain fees].) The court also relied on *Ward*. (*Haas*, 27 Cal.4th at pp. 1025, 1028, fn. 14.)

Tumey-Ward principles apply to local agencies acting in quasi-judicial contexts. (*Alpha Epsilon Phi Tau Chapter Housing Assn. v. City of Berkeley* (9th Cir. 1997) 114 F.3d 840, 845-846.) The City of Berkeley's rent stabilization board performed both executive functions and the quasi-judicial function of determining whether housing units were subject to rent control. (*Id.* at p. 844.) Because the board benefitted from registration fees when it found a unit subject to rent control, but received no fees when it found a unit free from rent control, the holdings of *Tumey*, *supra*, 273 U.S. at pp. 532-534, and *Ward*, *supra*, 409 U.S. at pp. 60-61, apply. (*Id.* at pp. 845-846.) But due process was not offended because the fees were so minimal that they did not "offer a possible temptation to the average man . . . not to hold the balance nice, clear, and true. . . ." (*Id.* at p. 845.[10])

Here, the City cannot decide what compensation to pay displaced residents of De Anza Cove because it would be acting as the judge in its own case. The structure created by the City's ownership of De Anza Cove creates a due process violation identical to that found in *United Church of*

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[10] See *R. L. Augustine Construction Co. v. Peoria Unified School Dist. No. 11* (Ariz. Ct. App. 1995) 183 Ariz. 393, 398 [procurement system violated due process because school board decided its own contractual obligations]; *R. L. Augustine Construction Co. v. Peoria Unified School Dist. No. 11* (Ariz. 1997) 188 Ariz. 368, 370 [vacating appellate decision and reaching the same result on statutory grounds].

the Medical Center v. Medical Center Com. (7th Cir. 1982) 689 F.2d 693, in which the commission that determined whether property had reverted to a local health facilities district was the same commission that administered the district. (689 F.2d at p. 700.) Just as the appellate court in *United Church* held that the reverter proceedings must be enjoined (*id.* at p. 701 [the district court abused its discretion in not doing so]), the superior court here correctly found that the City must not be allowed to determine the compensation due to plaintiffs. (See 27 RT 1779-1780.)

D. The Court Should Have Provided Compensation to November 2003 Resident Owners for In-Place Fair Market Value

The court identified steps to mitigate the adverse impacts of closure. As to many elements of mitigation, the opposing expert witnesses disagreed only in details. The court erred by failing to compensate owners of mobilehomes that cannot feasibly be moved for the adverse impact of destruction of their entire household.

The Court of Appeal should find error under either the de novo or abuse of discretion standard of review. De novo review of the definition of "reasonable costs of relocation" (Gov. Code, § 65863.7, subd. (e)) and the City ordinance requirement to relocate tenants (San Diego Mun. Code, § 143.0630(c)) would suffice. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432; *Bohbot v. Santa Monica Rent Control Bd.* (2005) 133 Cal.App.4th 456, 462 [local measures].) In a broader

perspective, the ultimate determination of an equitable remedy is a matter of discretion. (See, e.g., *Real Estate Analytics, Inc. v. Vallas* (2008) 160 Cal.App.4th 463, 472. The elements of the remedy, however, should be treated as embedded elements of law or policy on which the Court of Appeal does not defer. (*Ibid.* [trial court used incorrect presumption; under correct presumption, party objecting to specific performance failed to meet its burden].) Within the abuse of discretion standard, the Court of Appeal reviews the superior court's determination of the applicable law de novo. (*Horsford v. Board of Trustees of California State Univ.* (2005) 132 Cal.App.4th 359, 393.) "[A]n error of law constitutes an abuse of discretion." (*Carrillo v. Superior Court* (2006) 145 Cal.App.4th 1511, 1523-1524.) And even when a decision is not purely of law, the exercise of discretion must comply with the "legal principles and policies appropriate to the case before the court." (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984.) Plaintiffs will show that denying all compensation for household destruction is inconsistent with the values that animate Government Code section 65863.7 and San Diego Municipal Code, section 143.0630(c). (See *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800-801.)

1. The City's Own Ordinance Requires Compensation for Household Destruction

A mobilehome is a long term fixed asset. Civil Code section 798.55 makes the right to use a mobilehome on another's property nearly as

durable in time as the right to occupy a traditional home on one's own real estate. (24 RT 1539-1543 [Kerr admission].) When the coach cannot be moved, closure destroys both the market value and inherent value of a home.[11] (20 RT 877-878; 21 RT 1120; 22 RT 1278, 1308.) The "reasonable costs of relocation" then properly include the cost of replacing a long term asset that has suffered the "adverse impact" of complete destruction. (19 RT 799, 818-819, 828-829; Gov. Code, § 65863.7, subd. (e).) The many local ordinances requiring mitigation of adverse impacts by payment of in-place fair market value, evaluated on the assumption of continued occupancy under favorable conditions, recognize that an entire household must be relocated when a coach cannot be moved.

That the housing commission policy does not provide for mitigation of the adverse impact of household destruction is no obstacle. First, the policy is only that, not law. (San Diego Housing Com. Policy 300.401, § 5.4 [TE 104]; 24 RT 1574 [Kerr admission].) Second, the policy is inconsistent with the City's ordinance, which provides: "The relocation plan shall provide for the relocation of the tenants who will be displaced by the discontinuance of the use of the property as a mobilehome park or by the conversion of mobilehome spaces to other uses." (San Diego Mun. Code, § 143.0630(c).) A relocation plan that substitutes four years of rent

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[11] It is worth remembering that our word "economy" derives from the classical Greek words *oikos* (house) and *nemein* (to manage).

differential for a long term home does not provide for relocation of tenants whose mobilehomes cannot be relocated. Third, the argument that mitigating the adverse impact of household destruction wrongly requires the park owner to pay for real estate value must fail. As shown *ante*, the mitigation is for the mobilehome owner's loss of a long term asset. And to the extent the City's argument borrows from liberal property rights theory, it misses the point that Civil Code section 798.55 is the original partial taking of the park owner's property rights and Government Code section 65863.7 *doesn't give anything back*. Finally, the City of La Mesa final action on the La Mesa Terrace impact report demonstrates the insufficiency of the City housing commission policy to mitigate the adverse impact of closure on resident owners whose mobilehomes cannot be moved. The City admitted that the La Mesa final action, not the draft report, should provide the court's model. (25 RT 1714.) "We are not saying that you should use the initial recommendations in the tenant impact report. We are saying that you should use the final resolution which is in Exhibit 193 that was determined after the legislative process. . . ." (25 RT 1714.)

In summary, under the City's own ordinance, the court was required to provide compensation for household destruction to mobilehome owners whose coaches cannot be physically relocated.

2. The MRL Should Be Interpreted To Require Compensation for Household Destruction

In part II.B.2, *ante*, plaintiffs demonstrated that the court should defer to unanimous local ordinances requiring compensation for adverse impacts of change of use. That is because local agencies, when acting without conflict of interest, have a comparative advantage in understanding what the Legislature meant Government Code section 65863.7, subdivision (e), to provide for mobilehome park residents, and their unanimous interpretation represents substantial collective thought standing over a long period of time. (See, e.g., *Yamaha Corp. of America. v. State Bd. of Equalization*, *supra*, 19 Cal.4th at pp. 11-14; *Sara M. v. Superior Court*, *supra*, 36 Cal.4th at pp. 1012-1014.)

The court should apply the same principles in holding that some compensation must be paid for the destruction of the household consisting of an immovable mobilehome. Although not unanimous, the consensus remains strong. The vast majority of municipalities have reached the conclusion that the MRL requires compensation for the loss of one's home based on an "estimate of the fair market value of each mobilehome and all fixed property that cannot be relocated to a comparable mobilehome park"

(See, e.g., Laguna Beach Mun. Code, § 1.11.010(b)(12) [TE 97].)[12] Further, value must be estimated on the assumption that the current park would continue "in a safe, sanitary and well-maintained condition with competitive lease rates." (*Ibid.*) The consensus included the City before it began to shape its ordinance and policy by commercial self-interest. (TE 105.)

The consensus interpretation is further supported by principles of equal protection. The consensus sets a standard and expectation of compensation for household destruction in any housing market, like San Diego's, in which alternative mobilehome space is unavailable. If the City may exclude compensation for destruction of the household when a mobilehome cannot be relocated, it establishes a legislative classification that treats mobilehome owners in the City worse than mobilehome owners in virtually any other municipality in California. Under such an interpretation of the policy, "persons similarly situated with respect to the legitimate purpose of the law receive" materially different treatment. (See *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, 32.)

[12] Accord, Santa Clarita Mun. Code, § 6.04.070(B)(5) [TE 185]); San Juan Capistrano Mun. Code, §§ 9.2.331(c)(2)(L), 9.2.331(k)(7)-(8) [TE 998]; Huntington Beach Muni. Code § 234.08(A)(1), (2) [TE 99]); American Canyon Mun. Code, § 19.32.060(F) [TE 100]); Santa Rosa Mun. Code, § 6-67.030(D)(12) [TE 101]); Los Gatos Mun. Code, § 29.20.825(4)(a), 29.20.835(2)(k) (TE 2409); see also Chula Vista Mun. Code, § 9.40.010 [TE 2410].

Therefore, the superior court could not allow such a legislative classification. (See, e.g., *Brown v. Merlo* (1973) 8 Cal.3d 855, 861 [automobile guest liability statute held unconstitutional for lack of a rational basis]; *Britt v. City of Pomona* (1990) 223 Cal.App.3d 265, 274 [tax held unconstitutional for lack of a rational basis].)

3. Hypothetical Cost To Relocate a Coach that Cannot Be Relocated Is Not a Factor

In deciding not to award any factor for in-place value, the court may have relied on Kerr's testimony that the "reasonable costs of relocation" are the hypothetical costs of relocation if a resident owner's coach cannot be moved. In addition to being impermissible testimony on an issue of statutory interpretation, Kerr's position errs.

The history of Government Code section 65863.7 refutes the City's theory that the "costs of relocation" in subdivision (e) are limited to the costs of physically relocating the coach. As first enacted, the statute allowed imposition of mitigation compensation for "any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park." (Stats. 1980, ch. 879, § 2, p. 2760.) *Space* connotes rented land on which to place a coach. A 1985 amendment changed the focus to finding "adequate *housing* in a mobilehome park." (Stats. 1985, ch. 1260, § 1, p. 4329.) *Housing* connotes not merely land on which to place a coach, but also a different

coach. The same legislation added the provision that "[t]he steps required to be taken to mitigate shall not exceed the reasonable costs of relocation." (*Ibid.*) Nothing about that phrase connotes that "reasonable costs" are limited to the hypothetical expense of moving a coach that cannot feasibly be moved. To the contrary, such a limit would contradict the purpose of expanding the statute to provide for compensation for new *housing*.

4. Quantification Issues Should Not Impair the Principle of Compensation

Plaintiffs acknowledge that the City has a credible partial defense that resident mobilehome owners who bought cheaply in 2000 or thereafter, under imminent threat of closure, should not receive relocation benefits as if they were long term owners. How in equity to apply that defense should be an issue for claims administration on remand, not an objection to a proper element of relocation assistance.

E. The Court Erred by Requiring a Tenant Impact Report and Appointing Referees To Review the Report

After a trial devoted to equipping the superior court to enter a final judgment, the Order reopens the case for new evidence to be created by a tenant impact report and for all the evidence to be reviewed by the special masters before final adjudication. (4 AA 1040) The court articulated no legal or factual ground for this result except complexity. (*Ibid.*) When the court first announced its concept of appointing two special masters, it

explained that it was overwhelmed with the mechanics of implementing the actual departure of park residents, particularly with providing residents adequate relocation support staff. (27 RT 1781-1783; see 28 RT 1801.) Instead of changing the entire purpose of trial, the court should have solved that problem by issuing a mandatory injunction as part of final judgment to compel the City to contract with and pay for that staff.

The Code of Civil Procedure contains no provision for a court to appoint a special master; in California parlance, the court appointed referees, as described in Code of Civil Procedure section 639. It had no jurisdiction to do so. To begin with, the Order fails to state a statutory basis for appointing a referee. (Code Civ. Proc., § 639, subd. (d); Cal. Rules of Court, rule 3.922(c).) The court could not have theorized authority for the appointment except under one of paragraphs (1) through (4) of subdivision (a) of section 639, so the court was required to state the reason for appointing the referees. (*Ibid.*) Other than mentioning complexity, the order fails. If the court had tried, it could not have complied with the statutory requirements. The referees are not appointed to examine a "long account" or to take an account. (Code Civ. Proc., § 639, subd, (a)(1), (2).) The questions of fact delegated to the referees arise "upon the pleadings," not collaterally. (Code Civ. Proc., § 639, subd. (a)(3).) And this is a civil action, not a special proceeding. (Code Civ. Proc., § 639, subd. (a)(4.).)

In short, the court should have resolved the monetary aspects of the case (establishing a class action claims process if necessary) and issued a mandatory injunction to the City to provide nonmonetary relocation assistance as substantially agreed in the respective parties' experts' testimony.

F. Plaintiffs Were Entitled to a Jury Trial To Determine Actual Damages

The de novo standard of review applies to determining whether a party is entitled to trial by jury in a civil matter. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 23.)

1. MRL Damages

Plaintiffs should have been granted their request for a jury trial for money damages. Civil Code section 798.86 provides in full: "If a homeowner or former homeowner of a park is the prevailing party in a civil action, including a small claims court action, against the management to enforce his or her rights under this chapter, the homeowner, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed two thousand dollars ($2,000) for each willful violation of this chapter by the management." The Court of Appeal should hold here that the phrase "in addition to damages afforded by law . . ." creates a private right of action for actual damages caused by a violation of the MRL. That is what the Court of Appeal held in *De Anza Santa Cruz*

Mobile Estates Homeowners Assn. v. De Anza Santa Cruz Mobile Estates (2001) 94 Cal.App.4th 890, 910.

Here, some plaintiffs are, and plaintiffs represent, homeowners who were "prevailing part[ies] in a civil action" (Civ. Code, § 798.86, subd. (a)) by the summary adjudication order. Therefore, the plaintiffs who are homeowners on behalf of themselves and on behalf of homeowner class members were entitled to their actual damages. And a party is entitled to jury trial on a severable legal claim in an action that otherwise involves equitable matters. (*Connell v. Bowes* (1942) 19 Cal.2d 870, 871.)

2. Breach of Mandatory Duty

Similarly, plaintiffs were entitled to a jury trial of damages recoverable under Government Code section 815.6.[13] The City was under a mandatory duty to comply with the MRL by, at a minimum, providing an impact report before destroying mobilehomes and related improvements. (Civ. Code, § 798.56, subd. (f).) Government Code section 815.6 provides a proper basis to try damages caused by the City's failure to protect against property destruction and dislocation that occurred as a result of acting against owners and residents without complying with the MRL.

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[13] Government Code section 815.6 provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

III.

THE COURT ERRED IN REDUCING THE CLASS

The court should have retained in the class all persons whose rights vested no later than November 23, 2003.

A. Persons Who Signed Settlement-Rental Agreements Should Not Have Been Severed Because the Waivers of MRL Benefits Were Void as a Matter of Law

While the superior court has substantial discretion in matters of class certification, an appellate court must reverse a certification determination if the lower court used improper criteria or made erroneous legal assumptions. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435-436; *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.)

Indisputably, the settlement-rental agreements allow mobilehome owners to remain in De Anza Cove in exchange for payment of rent. (3 AA 639.) A " '[r]ental agreement' is an agreement between the management and a homeowner establishing the terms and conditions of a park tenancy." (Civ. Code, § 798.8.) " 'Tenancy' is the right of a homeowner to the use of a site within a mobilehome park on which to locate, maintain, and occupy a mobilehome. . . ." (Civ. Code, § 798.12.) By the explicit definitions of the MRL, then, the settlement-rental agreements were MRL rental agreements.

Civil Code section 798.19 provides in full: "No rental agreement for a mobilehome shall contain a provision by which the homeowner waives

his or her rights under the provisions of Articles 1 to 8, inclusive, of this chapter. Any such waiver shall be deemed contrary to public policy and void."

To the extent the settlement-rental agreements waived the right to relocation benefits required by Civil Code section 798.56, in article 6 of the MRL, they were void under Civil Code section 798.19. Terms of a settlement agreement are subject to the same rule of voidness for illegality as are terms of any other contract. (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.)

Because the exclusive reason for redefining the class to exclude people who signed settlement agreements was the court's conclusion that the waiver of relocation benefits was *not* void as a matter of law, the order redefining the class must be reversed. The superior court had no discretion to base redefinition of the class on an error of law. (*Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at pp. 435-436; *Bartold v. Glendale Federal Bank*, *supra*, 81 Cal.App.4th at p. 828.)

B. Persons Who Were Evicted from De Anza Cove after Having Accrued Rights to MRL Benefits Should Not Have Been Severed

People who were evicted by unlawful detainer proceedings after November 2003 did not thereby lose their right to relocation benefits. (See, e.g., *Bracciocco v. Curtis* (1938) 12 Cal.2d 109, 116 [tenants successive action for security deposit not barred]; *Vasey v. California Dance Co.*

(1977) 70 Cal.App.3d 742, 746-747 [general consequences of limited scope of issues in unlawful detainer].) They are likely to be the class members most impoverished and least able to make individual claims for their benefits. They add a very small number to the class. (19 RT 769.) It was an abuse of discretion to exclude them.

IV.

THE COURT ERRED IN SUSTAINING THE DEMURRER TO THE CALIFORNIA RELOCATION ASSISTANCE LAW, INVERSE CONDEMNATION, AND CONSTITUTIONAL CAUSES OF ACTION

A. The CRAL

The demurrer ruling as to the CRAL is reviewable because it limited the trial to determining benefits under the MRL. (Code Civ. Proc., § 906.)

Whether plaintiffs can try entitlement to benefits under the CRAL depends on whether they fall within the definition of displaced persons. A displaced person eligible for benefits under Government Code sections 7261 and 7262 includes "any person who moves from real property, or moves his or her personal property from real property . . . [a]s a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity. . . ." (Gov. Code, § 7260, subd. (c)(1)(B)(ii).)

The TAC alleges that the City was undertaking the project of demolishing De Anza Cove. (1 AA 103-104.) It alleged that by both official acts and harassment the City was displacing residents, forcing them to abandon mobilehomes that could not be moved to other parks. (1 AA 94-95.) Further, the City acted pursuant to a long term program to terminate residential housing at De Anza Cove and develop the area with more lucrative projects. (1 AA 88-94.) Those allegations stated a cause of action for benefits under Government Code sections 7262, subdivision (a) or (b) (moving expenses) and 7263 (supplemental payments to persons displaced from a place of abode in which they lived for at least 180 days). Further, plaintiffs may use the CRAL to claim benefits required by federal law. (Gov. Code, § 7260.5, subd. (c)(4).)

In *Stephens v. Perry*, *supra*, 134 Cal.App.3d 748, the Court of Appeal held that an airport district's termination of a master lease underlying a mobilehome park did not entitle the mobilehome owners to benefits under the CRAL. (134 Cal.App.3d at pp. 754-755.) But the holding in *Stephens* relied on the then-current version of Government Code section 7260, which defined displaced persons only as those " '*displaced because of the acquisition of real property* for public use.' " (*Id.* at p. 754 [court's italics]; see Stats. 1979, ch. 748, § 1, p. 2598; Stats. 1981 ch. 385 § 1, p. 1571.) It was not until 1989 that the Legislature expanded the CRAL to cover "rehabilitation, demolition, or other displacing

activity. . . ." (Stats. 1989, ch. 828, § 1, p. 2736.) And when it did so, it added Government Code section 7260.5, subdivision (a)(1), expressly finding that displacement occurs by rehabilitation and demolition as well as acquisition. (*Id.*, § 2, p. 2738.) Finally, if acquisition were required for displaced person qualification, or if it is required for any particular benefit, the change of possession effected by the expiration of the Master Lease was an acquisition for the purpose of the CRAL. (25 Cal. Code Regs., § 6008, subd. (a).)

The superior court erred when it sustained the City's demurrer to the CRAL cause of action.

B. Inverse Condemnation

The order sustaining the demurrer to the inverse condemnation cause of action is reviewable because it precluded plaintiffs from trying, at least, claims for compensation for physical damage to personal property consisting of mobilehomes and storage facilities. (Code Civ. Proc., § 906; 1 AA 160-161; 1 RT 22-23.)

The superior court erred because damage to personal property by a public agency acting for a public purpose gives rise to an action for inverse condemnation even if the property is not itself used for the public purpose. (*Sutfin v. State of California* (1968) 261 Cal.App.2d 50, 53-54, followed in *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 67.) When, for example, a public project results in diversion of a stream and the diverted

stream later causes damage to personal property, the owner of the personal property has an action for inverse condemnation. (*Sutfin*, 261 Cal.App.2d at pp. 56-57.) Nothing about the TAC allowed the superior court to conclude as a matter of law that the plaintiffs and other class members could not prove inverse condemnation damages for physical damage to personal property.

C. Constitutional Claims

Plaintiffs limited their constitutional causes of action to what amounted to a declaratory relief challenge to the City's attempt to exclude De Anza Cove from its otherwise applicable ordinance and state laws. (1 AA 47-48, 108-109; San Diego Mun. Code, § 143.0615(b).) Plaintiffs already demonstrated that the City violated due process by making itself the judge in its own case and then enacting resolution R-298609 to adjudicate plaintiffs out of relocation benefits. (*Ante*, pp. 52-54.)

Plaintiffs also pled a valid equal protection attack on the exception in San Diego Municipal Code section 143.0615(b). "A legislative classification satisfies equal protection of law so long as persons similarly situated with respect to the legitimate purpose of the law receive like treatment." (*Connerly v. State Personnel Board*, *supra*, 92 Cal.App.4th at p. 32.) While legislative classifications are generally upheld (*ibid.*), that principle did not authorize the superior court to sustain the demurrer on the ground that De Anza Cove residents were not a suspect class. (1 AA 53-54,

184.) Plaintiffs were entitled to develop facts demonstrating that absolutely excluding them from law applicable to all other mobilehome parks failed the rational basis test because it subjected similarly situated people to unlike treatment based solely on the City's pecuniary interest and attempt to enforce an unlawful waiver of MRL benefits. (See, e.g., *Brown v. Merlo*, *supra*, 8 Cal.3d at p. 861; *Britt v. City of Pomona*, *supra*, 223 Cal.App.3d at p. 274.)

CONCLUSION

The Court of Appeal should reverse the Order with the following directions:

1. To vacate its orders sustaining the City's demurrers to the first amended complaint and the TAC and to enter different orders overruling the demurrers as to the inverse condemnation, CRAL, California constitutional due process, and California constitutional equal protection causes of action;

2. To redefine the class to include all De Anza Cove mobilehome owners and residents as of November 23, 2003;

3. To determine the monetary compensation the City owes to class members for mitigation of the adverse impacts of relocation, and to include compensation for the destruction of households;

4. To set the matter for jury trial to establish the actual damages class members may recover under the MRL and Government Code section 815.6;

5. To enjoin the City to provide such nonmonetary relocation assistance (e.g. relocation assistance coordinators) to class members as the court finds proper;

6. To enforce the compensation requirements by enjoining the City from removing from De Anza Cove any person entitled to monetary compensation or nonmonetary relocation assistance unless the City has first provided the compensation and assistance required by the judgment; and

7. For further proceedings in the matters of civil penalties, attorney fees and other relief to which the plaintiffs may be entitled.

Respectfully submitted,

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