

Thursday, December 23, 2010

Renters Win Mobile Home Ruling

Court reverses itself and delivers big win for cities in eminent domain-based fight.

By Laura Ernde

The 9th U.S. Circuit Court of Appeals reversed itself Wednesday and rejected a constitutional challenge to a Santa Barbara County mobile home rent-control ordinance.

The 8-3 ruling was a big win for local governments, which feared they would be liable to landlords across California under the court's earlier ruling by a three-judge panel. *Guggenheim v. City of Goleta*, 2010 DJDAR 19204

Writing for the majority, Judge Andrew J. Kleinfeld said the rent-control law did not violate the takings clause of the Fifth Amendment, which limits the government's eminent-domain power by requiring that "just compensation" be paid if private property is converted to public use.

Mobile home park owners knew about the rent-control law when they bought their property in 1997, and had no expectation that it would be repealed, Kleinfeld said.

"The idea, after all, of the constitutional protection we enjoy in the security of our property against confiscation is to protect the property we have, not the property we dream of getting," he said.

In dissent, Judge Carlos T. Bea argued the rent-control law didn't promote affordable housing and simply transferred wealth from mobile home park owners to "one lucky group of tenants."

"The ordinance unquestionably places a high burden on a few private property owners instead of apportioning the burden more broadly among the tax base," Bea wrote.

Bea was joined by Chief Judge Alex Kozinski and Judge Sandra S. Ikuta.

The ruling overturned a 2-1 panel of the 9th Circuit that sided with the owners of Range Mobile Estates in their lawsuit against the city of Goleta. The city adopted Santa Barbara County's 1979 rent control law when it incorporated in 2002.

The park owners said the law artificially inflated the value of tenants' mobile homes while allowing the owners to collect only a quarter of market rent.

Kleinfeld, whose original dissent persuaded the court to take another look at the case, convinced Judge Alfred T. Goodwin to change his mind and vote with the en banc majority. Goodwin originally voted with Judge Jay S. Bybee in favor of the park owners.

Robert S. Coldren of Hart, King & Coldren in Santa Ana, who represented the park owners, said he is weighing an appeal to the U.S. Supreme Court.

Andrew W. Schwartz of Shute, Mihaly & Weinberger in San Francisco, who represented the city of Goleta, said the ruling protects owners of mobile homes who were in danger of losing their homes under the earlier ruling.

The decision has wider implications for takings-clause challenges to other government land use and environmental regulations.

"This court has applied the test for what constitutes a taking in a way that shows the proper deference to these types of policies," Schwartz said.

Michael von Loewenfeldt of Kerr & Wagstaffe in San Francisco said Wednesday's ruling helps him fend off a similar lawsuit brought against the city of San Rafael. His case is pending at the 9th Circuit after Chief Judge Vaughn Walker ruled that the city's rent control ordinance was invalid.

Imagine ...
An Independent Mediation Practice,
Redesigned, Reformed and Renewed!

Jeff KICHAVEN
"The Way Mediation Ought to Be"

888-425-2520 www.jeffkichaven.com

MICHAEL G. GERNER
A PROFESSIONAL LAW CORPORATION

- 30+ YEARS EXPERIENCE
- STATE BAR OF CALIFORNIA
- FORMER ASST. CHIEF TRIAL COUNSEL

STATE BAR DEFENSE

- Attorney Discipline ■ Admissions
- Reinstatements ■ Ethics Consultations
- Conviction Referrals

MGG Ethics 310-556-1300
mgethics@msn.com

"Hopefully at some point, these landlords who bought cheap land - land that was cheap because it was rent controlled - will stop trying to gouge their tenants by attempting to overturn the laws in place when they bought their land," von Loewenfeldt said.

[HOME](#) : [CLASSIFIEDS](#) : [EXPERTS/SERVICES](#) : [CLE](#) : [DIRECTORIES](#) : [SEARCH](#) : [LOGOUT](#)