G O L D E N S T A T E M A N U F A C T U R E D – H O M E O W N E R S L E A G U E

GSMOL
www.gsmol.org 1 (800) 888-1727

14802 Beach Blvd., La Mirada CA 90638 TEL: (714) 826-4071 FAX: (714) 826-2401

*****IMPORTANT FEDERAL COURT VICTORY ANNOUNCED*****

U.S. NINTH CIRCUIT COURT OF APPEALS REJECTS CHALLENGE TO CITY OF CARSON MOBILEHOME RENT STABILIZATION ORDINANCE

On April 23, 2018 the United States Court of Appeals for the Ninth Circuit issued an important Opinion overturning a lower District Court decision which had awarded a large monetary judgment in favor of notorious park owner James Goldstein. Entitled *Colony Cove Properties, LLC v. City of Carson*, the case involved the City of Carson's "Mobile Home Space Rent Control Ordinance" ("RSO"), and a 2008 application by Goldstein"s LLC which sought a $342.00 rent increase from each homeowner. The park owner purchased Colony Cove Mobile Estates in 2006, long after the 1979 Carson RSO had been enacted. A majority of the claimed expenses upon which the large rent increase was based were driven by "debt service" costs incurred by the park owner to finance its purchase of the property. Virtually every mobilehome RSO in California disallows such interest expenses, since financing and loan interest can and often are easily manipulated by park owners.

After receiving only $25.00 of the requested amount, Goldstein's LLC sued the City, asserting both facial and as-applied "takings" of its property under the Fifth Amendment. At trial, a jury awarded $3.3 million dollars in damages to the park owner; an award that sent shock waves through the local government communities throughout California. The City appealed, and formed a large coalition of "amicus curiae" friends of the court in support. GSMOL was contacted in early 2017 by the coordinating law firm, "Shute, Mihaly & Weinberger LLP" in San Francisco, inviting us to join the coalition supporting the City of Carson. GSMOL quickly accepted, and joined with such groups as Western Center on Law and Poverty, Tenants Together and California Rural Assistance, Inc. to file an Amicus Curiae brief with the Court.

The Ninth Circuit panel threw out the astronomical $3.3 million dollar jury award, ruling:

1. Applying the factors set forth in the U. S. Supreme Court case of *Penn Central Transportation Co. v. City of New York, 438 U. S. 104 (1978)*, the Court held that the park owner did not present sufficient evidence that it suffered an economic impact when its large rent increase application was denied;

2. Applying the same case, the Court held that the park owner failed to present sufficient evidence that when it purchased the park Goldstein "expected the rent Board to consider his debt service in future rent increase determinations". (i.e. the Court rejected the "investment-backed expectations claim raised pursuant to *Penn Central*); and

3. The Court held that the City's denial of the rent increase did not constitute a "physical taking" of the park owner's property under the Fifth Amendment.

In making its decision, the Court importantly noted that "[n]ot every diminution in value caused by a government regulation rises to the level of an unconstitutional taking. 'Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." More than 50% diminution in value, and likely something in excess of 90%, would be required to potentially find a "taking" of the park owner's property.

The Court also found that Goldstein's expectation that "debt service" loan interest would be allowed as a recoverable expense was not "reasonable", and that no California appellate court decisions required "the City to take debt service into account in considering rent increase applications…"

Finally, the Court rejected the argument that the Carson RSO "targeted" the park owner's acquisition of the property and the large debt service that it voluntarily chose to incur. This ruling prevents a park owner from running up huge financing costs at the time of purchase or refinance, with the belief that the park residents shall be the ones paying the debt service through large rent increases. Such an absurd result is precisely <u>why</u> local RSO ordinances do <u>not</u> allow debt service interest as an expense in a rent increase application.

This case represents a critical "win" for mobilehome residents, especially in local jurisdictions where RSO are still being argued or considered. Park owner advocates can no longer argue that by enacting mobilehome rent stabilization a City or County could be risking a $3 million dollar judgment like that in Carson. The now overturned Carson District Court jury award was being used to great propaganda effect by park owners to scare City Councils and Boards of Supervisors away from adopting an ordinance. But no longer!

Like the *Guggenheim v. City of Goleta* and *MHC v. City of San Rafael* cases of a few years ago, this latest *Colony Cove* decision proves yet again that a well-organized coalition which supports a City who is willing to stand up and fight for its RSO can always overturn a bad lower court decision. In each of these three cases, legal resources were effectively mobilized and horrible lower court decisions were reversed. GSMOL was honored to participate in each of these significant victories by filing a legal brief with the courts. Strong local governments and strong homeowner advocacy, like only GSMOL can provide, continue to be instrumental in protecting the equity investments of mobile homeowners in their homes, and the continuation of the mobilehome lifestyle.

By: Bruce E. Stanton, Esq
GSMOL Corporate Counsel