

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 01/05/2017

TIME: 04:03:00 PM

DEPT: 21

JUDICIAL OFFICER PRESIDING: Kent Kellegrew

CLERK: Art Alvara

REPORTER/ERM:

CASE NO: **56-2016-00485246-CU-MC-VTA**

CASE TITLE: **Greenfield vs Mandalay**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the request for preliminary injunction under submission, now rules as follows:

The Court DENIES plaintiffs' request for a preliminary injunction. The plaintiffs' evidence demonstrates that granting injunctive relief would disrupt the status quo.

Background: Plaintiffs identify themselves as the owner of a house in Mandalay Shores. They say they have been renting the house to others beginning in July 2015. They say that the Board of Directors of Defendant Mandalay Shores Community Association passed resolution(s) on June 26 and June 29, 2016, prohibiting the rental of any property for a period of fewer than 30 days, effective August 20, 2016. They say they have (had) five rental parties booked after that period.

Mandalay Shores is within the **coastal zone** as defined in the California Coastal Act, Public Resources Code section 30000, et seq.

The Mandalay Bay HOA has defined a **Short Term Vacation Rental (STVR)** as any period fewer than 30 days. Mandalay's definition is consistent with the City of Oxnard's definition of short term rental. The Plaintiffs take exception to the HOA's restriction on the use of their property.

Grounds: Plaintiffs argue that the limitation on rental period is a "development," as that word has been defined, for purposes of the Coastal Act, Public Resources Code section 30106 (change in the density or use of land); (*Pacific Palisades Bowl Mobile Home Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 797 (mobile home park conversion was a "development" subject to permit requirements of Act, regardless of whether the project would have any impact on the density or intensity of land use).) They argue that Defendants were required to get a **coastal development permit** for this "development" from both the City of Oxnard (Pub. Resources Code, § 30600) and the California Coastal Commission (Pub. Resources Code, § 30601).

Plaintiffs argue Defendant's failure to obtain coastal development permits violates the Act and, therefore, they are entitled to relief under section 30803:

(a) Any person may maintain an action for declaratory and equitable relief to restrain **any violation of this division**, of a cease and desist order issued pursuant to Section 30809 or 30810, or of a restoration order issued pursuant to Section 30811. On a prima facie showing of **a violation of this**

division, preliminary equitable relief shall be issued to restrain any further violation of this division. No bond shall be required for an action under this section.

Opposition: Defendant Mandalay argues that the limitation is consistent with its CCRs and that it complies with the Oxnard zoning regulations, where Mandalay is located in an R-B-1 zone (single-family beach), which does not include transient occupancy as a permitted use. If a use is not specifically listed, it is presumed prohibited. Oxnard Zoning, Oxnard Ordinances section 17-5(l)[1]. By contrast, the CVC-Coastal Visitor-Serving Commercial subzone includes visitor-serving services: commercial recreation, skating rink, amusement center, campground, swim club, boat rentals, bike rentals, entertainment, theater, night-club, motor vehicle service station, tourist hotels, motels, convention and conference facilities, and vacation timeshare developments. (*Id.* at § 17-18(B)(1).) Defendant says a transient is defined in the general zoning section as a tourist or other person abiding in the city for a short period of time. (*Id.* at § 16-10(A)(140).)

Analysis: One issue is whether Mandalay Bay HOA violated the Act by failing to get a coastal development permit for its resolutions. Arguably, the HOA's restrictions impact the California coastal zone management. If the HOA's short-term vacation rental restriction is a "development," as defined by the Public Resources Code, this Court may be required to enjoin the Defendant. If the resolutions do not come within the definition of "development," then there is no violation.

A separate issue presented in this case involves conduct by individual homeowners. The evidence produced by the Plaintiffs in their moving papers establishes that the actions of individual homeowners are significantly increasing the use of the coastal zone. This Court must assess what constitutes the status quo and determine whether or not issuing an injunction will undermine or alter the status quo.

1. The Court is not engaged in a discussion of whether the 30-day rental limitation is a violation of the Act. The Superior Court is not the proper venue to assess whether or not Mandalay Bay HOA rules conflict with the Coast Commission goals and plans. The parties should take this dispute to the Coastal Commission which has the authority and resources to develop a comprehensive plan to regulate the limited coastal beach front state asset.

The evidence submitted to this Court reflects that while coastal commission decisions seem to reject outright prohibition of vacation rentals in coastal zones, the July 19, 2016, Coastal Commission packet of "Sample Commission Actions on Short Term Rentals" shows a continuum of approved nuanced local coastal plan amendments: limitation of the percentage of vacation rentals (15%); limitation of the number of guests (2 per bedroom); limitations to seven-day stays; allowing vacation rentals west but not east of 101 in Encinitas; and allowing short-term rental in C-1, C-2, and MU-2 zones, but not in residential zones (Imperial Beach).

Indeed, the Willis letter, dated August 26, 2016, sets forth the policy priorities of lower cost visitor and recreational facilities and concludes that the Mandalay Bay HOA Board's STVR ban affects an entire class of accommodations that provides widespread lodging opportunities that are varied in cost. Willis says this was a change in use requiring a development permit. He adds that the goal is some mutually agreeable resolution for **regulation** of short-term rentals, acknowledging residents concern about noise, special events, parking, litter, onsite management, etc. [2]

The Court is not in a position to tailor STVR rules (*e.g.*, no you can't have 30 days, but how about 7 days with the term commencing Sunday afternoon and ending Saturday morning – to address those weekend party rentals short term rental; maximum of two people per bedroom, *e.g.*, only six people in a three bedroom house, etc.). That should be left for the City, which is in the process of considering amending its coastal zoning section to specifically deal with STVR and the Coastal Commission, which reviews any proposed amendment to the local coastal plan.

The Court is persuaded that the evidence produced to date supports the conclusion that the resolutions are not a "development" because they do not change the zoned use of the Mandalay beach properties and Plaintiffs say they only began vacation rentals in 2015.

2. The Mandalay Bay Homeowners' Association Resolutions are not a development

because they do not change the existing zoning use for the R-B-1 zone, covering the Mandalay Shores homes. The Mandalay Bay HOA resolutions prohibit rentals for terms less than 30 days and are consistent with the use permitted by the Oxnard City Coastal Zoning Ordinance.

The R-B-1 zone (single-family beach) does not include transient occupancy as a permitted use. (See City of Oxnard Local Coastal Program Implementation Plan (Zoning Ordinance, SEC. 17-10(A).) If a use is not specifically listed, it is presumed prohibited. (Oxnard Zoning, Oxnard Ordinances § 17-5(I).)[3]

By contrast, the CVC-Coastal Visitor-Serving Commercial subzone-includes visitor-serving services: commercial recreation, skating rink, amusement center, campground, swim club, boat rentals, bike rentals, entertainment, theater, night-club, motor vehicle service station, tourist hotels, motels, convention and conference facilities, and vacation timeshare developments. (*Id.* at § 17-18(B)(1).) A transient is defined in the general zoning section as a tourist or other person abiding in the city for a short period of time. (*Id.* at § 16-10(A)(140).)

The general zoning section also defines a bed and breakfast as "an establishment, originally built as a single-family residence, operated by a resident owner and containing three to five guest bedrooms, each of which is available for rent to the general public for up to 29 consecutive days." (*Id.* at § 16-10(a)(17).) This is not included as a permitted use in the R-B-1 zone, and notably is qualified by "29 days."

The Resolutions, thus, do not constitute a change in the use or density of land. (Pub. Resources Code, § 30106.)

3. The purpose of an injunction is to maintain the status quo until a complete adjudication can occur. The evidence in this case is substantially in conflict. Issuance of an injunction most likely will have the result of increasing the density and intensity of the coastal resource in question.

The Plaintiffs have submitted the declaration of Kristine Brooks-Brewer in support of their motion for preliminary injunction. Ms. Brooks-Brewer states,

The total number of rentals of Coastal Zone homes for less than 30 consecutive days from August 20 to December 31 has increased each year for the past five years. (Brooks-Brewer August 13, 2016, declaration, page 2, paragraph 8, lines 19-20.)

Accordingly, the Plaintiffs' evidence supports the conclusion that density and intensity of use will continue to increase if Mandalay Bay HOA's STVR prohibition is enjoined. The Plaintiffs' evidence demonstrates that conduct of individual homeowners who engage in STVRs is in fact creating a "development," as defined by the Public Resources Code.

The state of the evidence indicates that any action taken by the Superior Court will interfere with the authority of the Coastal Commission. If the Court grants the Plaintiffs' request for an injunction, the evidence supports the conclusion that density and intensity of use will continue to increase in the Mandalay Bay Homeowner's Association due to short-term vacation rentals. If the Court declines to issue an injunction, arguably the public will be restricted in its access to the coast.

The appropriate agency to address the issues raised by this case is the Coastal Commission. The Court is not persuaded that issuing an injunction will preserve the status quo. Accordingly, the request for injunctive relief is denied.

Clerk to provide notice.

[1] Uses not specifically permitted in stated sub-zones - If a proposed use is not listed as permitted or conditionally permitted, such use shall be assumed to be prohibited unless the city council determines, following recommendations from the commission and a public hearing, that the proposed use is substantially the same as a listed use.

[2] We are not in the halcyon days of the late 50s – 70s. We are not talking about middle class families who can only afford a week at the beach. We seem to have moved to the "special event" weekend rentals, as typified from the fact pattern of an earlier case:

This case involves a short term rental for a beach house. The rental agreement for August 30 – September 4, 2012, was executed by David Smith and Paul Davis, with a \$5,000 rental and a \$2000 security deposit, with a 15 person limit. Plaintiffs allege that they told Defendants that the house was precious, that they didn't rent to short-term tenants because they would not take care of the property. Defendants told them the property would be used by a few quiet people from the same church. Plaintiffs allege that to the contrary, Defendants had several large, loud parties with well over 50 people per party. Plaintiffs allege that Defendants left damages of at least \$47,500 (\$19,000 in physical damage and \$150 per person over the 15-person limit).

[3] Uses not specifically permitted in stated sub-zones - If a proposed use is not listed as permitted or conditionally permitted, such use shall be assumed to be prohibited unless the city council determines, following recommendations from the commission and a public hearing, that the proposed use is substantially the same as a listed use.