

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY

MINUTE ORDER

DATE: 03/19/2019

TIME: 11:53:00 AM

DEPT: N-29

JUDICIAL OFFICER PRESIDING: Robert P Dahlquist

CLERK: Lynn Arthur

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2017-00013257-CU-WM-NC CASE INIT.DATE: 04/10/2017

CASE TITLE: **San Diego Tenants United vs. City of Encinitas [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on March 8, 2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Proposed Intervenor Preserve Proposition A's (PPA) motion for leave to intervene is denied.

PPA seeks to intervene pursuant to Code of Civil Procedure section 387, subd. (d)(2). That statute provides: "The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties or an interest against both."

"[T]he trial court has discretion to permit a nonparty to intervene where the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action. The permissive intervention statute balances the interests of others who will be affected by the judgment against the interests of the original parties in pursuing their litigation unburdened by others." *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4<sup>th</sup> 1030, 1036 (internal quotation marks and citations omitted)

As stated above, the decision whether to allow a nonparty to intervene is a discretionary decision, even if the proposed intervenor has met all of the requirements that would permit intervention. In this case, assuming for purposes of discussion that PPA otherwise satisfies all of the requirements for permissive intervention, the Court nevertheless would and does exercise its discretion to deny the request to intervene. (As will be mentioned below, the Court does not believe that PPA satisfies all of the requirements for permissive intervention.)

The Court exercises its discretion in this manner for the following reasons.

Frist, intervention in this lawsuit is unnecessary to enable PPA to protect its rights with respect to the City's adoption of a housing element plan that complies with state law. This Court has already issued a

writ of mandate directing the City to adopt a housing element plan that complies with state law. The Court has been informed that the City is engaging in an on-going legislative process to adopt a housing element plan. PPA is able to participate in that legislative process. It is the Court's understanding that PPA or its individual members have in fact been participating in that legislative process. Once the legislative process ends, and the City adopts a housing element plan, PPA may, if it believes it is aggrieved by the City's plan, seek judicial review at that time of the City's housing element plan by filing its own petition for mandamus.

Second, intervention by PPA at this very late juncture in the case will unnecessarily prolong the litigation and interfere with its efficient resolution. The Court has very serious doubts as to the timeliness of PPA's intervention application, but even if the application could technically be considered timely under applicable law, the balance of the equities in the current circumstances weighs heavily against permitting intervention at this late date. PPA and its counsel have been aware of this lawsuit since its inception. They elected to sit on the sidelines and watch as the lawsuit has unfolded. Now, after the merits of the lawsuit have been fully adjudicated, PPA wants to jump into the fray and re-litigate the case all over again. There is no good reason for the Court to allow this to happen, and there are very compelling reasons not to allow it to happen. In particular, the City has been out-of-compliance with state housing law for an extended period of time. The City has failed to plan for needed housing, including affordable housing, as required by state law. Any further delays in this litigation are likely to result in the City's continued non-compliance with state housing law, and continued shortages of needed housing.

In the paragraphs above, the Court has assumed that PPA qualifies for permissive intervention, and the Court has explained its exercise of discretion concerning PPA's application for intervention. But the Court believes that the assumption that PPA qualifies for permissive intervention is not a valid assumption. The Court finds that PPA does not meet the requirements for permissive intervention.

The Court finds that PPA has not presented a "timely application." Code of Civil Procedure, section 387, subd. (d)(2). In this regard, the Court agrees generally with Petitioners' arguments concerning timeliness, as set forth in Petitioners' Memorandum of Points and Authorities in Opposition to the Motion for Leave to Intervene, at pages 9 & 10. The Court likewise agrees generally with the City's arguments concerning timeliness, as set forth in the City's Memorandum in Opposition to Application to Intervene.

The Court finds that PPA's intervention will enlarge the issues in the litigation. In this regard, the Court agrees generally with Petitioners' arguments concerning new and expanded issues that PPA seeks to present, as set forth in Petitioners' Memorandum of Points and Authorities in Opposition to the Motion for Leave to Intervene, at pages 9 & 10.

Finally, the Court finds that the reasons for intervention do not outweigh the harm and prejudice to petitioners that will result from intervention. In this regard, the Court agrees that "[a]llowing intervention at this late date will inevitably delay final resolution of the two cases [the current case and a related case], force all parties to incur significant extra expense, and potentially substantially delay the adoption of a housing element, and with it, delay the production of needed housing that the housing element would permit." (City's Opposition, at page 3) The Court likewise agrees generally with Petitioners' arguments set forth in Petitioners' Memorandum of Points and Authorities in Opposition, at pages 10 & 11.

For all of these reasons, the Court denies PPA's application to intervene.

PPA's request that the writ be vacated is likewise denied. The Court has denied PPA's application for

intervention. As a nonparty, PPA has no standing to request that the writ be vacated. Assuming for purposes of discussion that PPA has standing, the Court finds that PPA has failed to sustain its burden of establishing a valid basis for vacating the writ.

IT IS SO ORDERED.

The minutes are the order of the Court. No formal order is required.

*Robert P. Dahlquist*

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Judge Robert P Dahlquist