

Second Civil Number B267816

**In the Court of Appeal
Of the State of California**
SECOND APPELLATE DISTRICT, DIVISION TWO

CITIZENS FOR ENFORCEMENT
OF PARKLAND COVENANTS, *et al.*,

Plaintiffs and Respondents,

v.

CITY OF PALOS VERDES
ESTATES, *et al.*

Defendants and Appellants.

**APPELLANTS ROBERT LUGLIANI, DOLORES A. LUGLIANI,
THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST'S
PETITION FOR REHEARING AND JOINDER IN THE PALOS
VERDES HOMES ASSOCIATION'S PETITION FOR
REHEARING**

Appeal from the Superior Court of the State of California,
For the County of Los Angeles,
Los Angeles Superior Court Case No. BS142768
Honorable Barbara A. Meiers, Judge

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The Via Panorama Trust

PETITION FOR REHEARING

Pursuant to rule 8.268(b) of the California *Rules of Court*, defendants and appellants Robert Lugliani, Dolores A. Lugliani, Thomas J. Lieb, Trustee, The Via Panorama Trust, (the “Luglianis”) petition this Court for Rehearing of its January 30, 2018 decision reversing in part and affirming in part the judgment below and holding that (1) triable issues of fact exist as to whether the transfer of property between the City of Palos Verdes Estates (the “City) and the Palos Verdes Homes Association (the “Association”) was proper, (2) the transfer of property from the Association to the Luglianis violated certain deed restrictions, (3) the judgment entered was overly broad, and (4) the attorneys’ fee award is to be recalculated. (Decision at p. 3.)

The Luglianis seek rehearing for all of the reasons set forth in the Association’s Petition For Rehearing (see formal joinder below).

In addition, the Luglianis seek rehearing as to the Court’s indispensable party ruling to correct legal and factual issues that would result in a reversal of the decision below. Specifically, this Court found that the Association’s indispensable party argument “rests entirely upon speculation” and that the School District is not a party to the 2012 deed transferring Parcel A to the Luglianis. (Decision at p. 17.)

Rehearing of this ruling is warranted for two reasons. First, it is incorrect that it is speculative that the Memorandum Of Understanding (“MOU”) will be unwound as a result of the return of Parcel A to the Association as that transfer was one of the key considerations for entry into the

four-party contract (MOU) and the School District is unquestionably a party to the MOU.

The return of Parcel A to the Association necessarily will reopen the fully performed MOU as the purchase of Parcel A was one of the key considerations under the MOU. The voiding of that consideration necessarily unwinds the MOU entered into by the four parties and would require renegotiation of the contract.

There can be little question that all parties to a contract (here the MOU) are necessary and indispensable parties. *Martin v. City of Corning* (1972) 25 Cal.App.3d 165, 169 (In an action seeking declaratory judgment that a contract is void, a party to the contract is indispensable); see also *Hold v. College of Osteopathic Physicians and Surgeons* (1964) 61 Cal.2d 750, 760. Thus, all parties to the MOU needed to be before the court when it voided one of the key considerations for the contract. Simply, where the rights involved in litigation arise upon a contract, courts ordinarily refuse to adjudicate the rights of some of the parties to the contract if the other parties are not before it. *Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1106-1107.

Second, it is erroneous to look to whether the School District is a party to the 2012 deed transferring Parcel A from the Association to the Luglianis. The operative contract to which the School District is a party is the MOU and the Parcel A transfer is one the key considerations provided for entering into that contract. It matters not that the School District was not a party to the 2012 deed; rather it is of singular importance that the School District is a party to the MOU and that the transfer of Parcel A was one of the key considerations for that contract. Unwinding the consideration in the MOU

necessarily affects the entire agreement and the School District was not before the court to protect its interests.

As a result of the legal and factual errors in the Court's indispensable party ruling, rehearing should be granted.

JOINDER

Pursuant to rule 8.200(a)(5) of the California *Rules of Court*, the Luglianis hereby join and adopt by reference the Petition For Rehearing of the Association.

The arguments set forth in the Association's Petition For Rehearing are applicable to the Luglianis.

Respectfully submitted,

DATED: February 14, 2018 ARMBRUSTER GOLDSMITH
& DELVAC LLP

By: 

Damon P. Mamalakis
*Attorneys for Defendants
and Appellants, Robert
Lugliani, Dolores A.
Lugliani, Thomas J. Lieb,
Trustee, The Via Panorama
Trust*

CERTIFICATE OF COMPLIANCE

I, the undersigned, Damon Mamalakis, declare that:

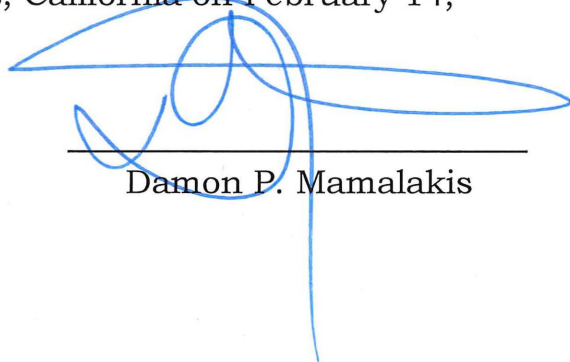
I am a partner in the law firm of Armbruster Goldsmith & Delvac LLP, counsel of record for Attorneys for Defendants and Appellants Robert Lugliani, Dolores A. Lugliani, Thomas J. Lieb, Trustee, The Via Panorama Trust.

This certificate of compliance is submitted in accordance with rule 8.204 (c) of the California *Rules of Court*.

This Petition For Rehearing and Joinder was produced with a computer. It is proportionately spaced in 13-point Bookman Old Style typeface. This brief contains 645 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on February 14, 2018.



Damon P. Mamalakis

PROOF OF SERVICE

Citizens for Enforcement of Parkland and Covenants v. City of Palos Verdes Estates (Case No. Second Civil B267816)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the action. My business address is 12100 Wilshire Blvd., Suite 1600, Los Angeles, California 90025.

On February 14, 2018, I served the following document described as

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THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST'S
PETITION FOR REHEARING AND JOINDER IN THE PALOS
VERDES HOMES ASSOCIATION'S PETITION FOR
REHEARING**

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 14, 2018 at Los Angeles, California.



Karen Hao