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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HENRY LEVY, as Administrator, Petitioner and Appellant, v. CITY OF LOS ANGELES et al., Respondents.	B248646 (Los Angeles County Super. Ct. No. BS128171)

APPEAL from an order of the Superior Court of California, County of Los Angeles. Luis A. Lavin, Judge. Affirmed.

Law Offices of Adam S. Rossman, Adam S. Rossman, for Petitioner and Appellant.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney, Saro Balian, Deputy City Attorney for Respondents.

Prosper Levy, a creditor, obtained by foreclosure five residential lots upon which partial construction of five houses had languished for years, the building permits having been revoked and the structures declared a nuisance. Levy sought an extension of time from the City of Los Angeles to forestall demolition of the structures and afford time to complete an environmental review. After a public hearing, the city denied the extension and ordered that the structures be demolished. Levy then instituted writ proceedings to compel the city to allow time for environmental review and renewal of building permits. After briefing and a trial, the trial court denied Levy's petition.

On appeal, the administrator of Levy's estate contends the city's action was unsupported by substantial evidence.

We affirm.

BACKGROUND

The property at issue and the partially completed construction upon it were the subject of an appeal a dozen years ago. (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1336 (*Arviv*).) Construction has not progressed in the intervening time, and we take some of the facts from the 2002 opinion.

In the 1980's, Yehuda Arviv, a land developer in the Los Angeles County area, purchased 21 lots located south of Mulholland Drive with the intention of building a house on each of the lots. He obtained a preliminary geological and soils engineering report that concluded construction of 11 proposed residences would be feasible if several recommendations concerning foundations and slopes were followed. The City of Los Angeles (the city) approved the report, conditioned on Arviv following all of its recommendations. However, "Arviv's plans lay dormant for the next 10 years." (*Arviv*, *supra*, 101 Cal.App.4th at p. 1337.)

In 1998, Arviv submitted an application and plans to build three houses on Woodstock Road. After the city approved both the proposal and an environmental clearance and issued a building permit, Arviv filed an additional application to build two more houses on Woodstock Road. The city approved that construction as well and issued a building permit without requesting any environmental study.

Arviv began building the five homes, and by March 2000, four were completed and the fifth was 80 percent complete. (*Arviv*, *supra*, 101 Cal.App.4th at p. 1338.)

In March 2000, Arviv filed an application to build two additional houses across the street from the five Woodstock Road houses. While this project was in the design review process, Arviv filed yet another application to build 14 more houses on some of the remaining lots, bringing the number of constructed and proposed houses to 21. When several neighbors complained Arviv was attempting to circumvent building regulations by engaging in piecemeal development fashioned to take advantage of environmental exemptions for projects of three or fewer single-family residences, city staff members discovered Arviv's project was in reality a 21-house project and further discovered the five houses on Woodstock Drive exceeded height limits. Staff recommended that an environmental impact report (EIR) be prepared for all 21 houses. Arviv acknowledged the houses on Woodstock Drive exceeded height restrictions but explained he had already acquired a variance for one of them and would seek variances for the others. He agreed to prepare an EIR for the 16 other houses but objected to any interference with the five on Woodstock Drive, for which he had already received permits and were already built and ready for sale.

Nevertheless, the South Valley Area Planning Commission ordered that an EIR be prepared for the entire 21-house project. Arviv sought a writ of mandate to overturn the decision, which the trial court denied. The appellate court affirmed, observing "[t]his entire case is the direct result of inadequate, or misleading, project descriptions. In other words, it is entirely possible a two-house project—located somewhere other than the steep slopes of the Mulholland Scenic Parkway Area—may in fact have a de minimus, or mitigatable, effect on the local environment. However, Arviv never intended a two or three house project. As he admitted at the hearing before the [South Valley Area Planning] Commission, he always envisioned a 21-house development. Apparently the City's planning department staff was never able to link the various projects together until . . . members of the public complained . . . . [¶] The significance of an accurate project description is manifest, where, as here, cumulative environmental impacts may be

disguised or minimized by filing numerous, serial applications. However, 'environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.' [Fn.]" (*Arviv*, *supra*, 101 Cal.App.4th at p. 1346.)

On appeal, Arviv contended he had a vested right not to complete an EIR concerning the five Woodstock Drive houses because permits for them had already been issued and environmental clearances obtained. The court rejected the argument, holding Arviv possessed no vested right because the city had failed to issue building permits for the five initial houses in accordance with applicable law. "Both CEQA and [certain city ordinances] existed at the time Arviv acquired permits to build the initial five houses," the court stated. "Compliance with these existing laws was thus required notwithstanding the City's failures and/or Arviv's misleading project descriptions which may have prevented the City from appreciating the full scope of the proposed development." (*Arviv*, *supra*, 101 Cal.App.4th at pp. 1349-1350.) The court concluded the first five houses on Woodstock Road could be subjected to belated environmental review because "[a]lthough five of the houses are already built, these structures are only part of all amenities required to make those houses habitable. Unresolved issues specifically regarding those five houses include ensuring adequate street width, an emergency vehicle turnaround area, sewer system design, drainage, and other matters which demonstrate even the five-house project is not yet complete." (*Id*. at p. 1351.)

In 2002, shortly before the opinion in *Arviv* was filed, petitioner Prosper Levy obtained the Woodstock Drive properties and soon thereafter sold them to Popular Realty, LLC. In November 2002, the city revoked Arviv's building permits and in 2003 declared the structures and premises a nuisance. It thereafter issued notices to abate the vacant structures and ordered the owner to barricade them, fence the premises, and remove accumulated trash and debris. The owner failed to comply.

In 2005, Alan Kapilow became the owner of the properties. In 2007, the city again revoked building permits and issued supplemental orders to abate. Kapilow

requested a 12-month extension of time to comply with the supplemental orders, which respondent Board of Building and Safety Commissioners (the Board) partially granted by approving a six-month extension. Even so, Kapilow never complied with the supplemental abatement orders, and in 2008 the city issued notices of intent to demolish the five structures on Woodstock Drive.

In the spring of 2009, Prosper Levy once again obtained ownership of the properties through foreclosure, but took no action to comply with the city's abatement orders. In October 2009, the city determined the structures on Woodstock Drive were 77 percent damaged and issued notices of intent to demolish them. Levy appealed the notices, requested an extension of time to comply with the city's orders, and contended the properties did not constitute a nuisance. At a hearing on Levy's appeal, the Board denied further extensions of time to comply with the city's abatement orders and found the five houses constituted a nuisance and should be demolished.

In 2010, Levy petitioned the superior court for an administrative writ directing the city and the Board to continue the public hearing on his administrative appeal.

In 2011, Levy died, and Henri Levy was appointed the administrator of his estate. Henri Levy then filed opening and reply briefs in the mandate proceedings and lodged an administrative record.

In 2013, the trial court denied Levy's writ petition on three alternative grounds: (1) Levy failed to demonstrate the city or Board abused their discretion; (2) substantial evidence supported their administrative actions; and (3) Henri Levy had no standing to pursue the matter.[1]

Levy timely appealed.

[1] Respondents concede on appeal that Henri Levy in his capacity as the administrator of Prosper Levy's estate is a proper party. We will refer to appellant as "Levy."

DISCUSSION

A writ of mandate may be issued by any court "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station . . . ." (Code Civ. Proc., § 1085, subd. (a).) The Los Angeles Municipal Code (LAMC) specifically enjoins the issuance of a building permit when the project conforms with the LAMC and other relevant codes. (LAMC, § 91.106.4.1.)[2]

There are two essential requirements to obtain a writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. (*Mission Hospital Regional Medical Center v. Shewry* (2008) 168 Cal.App.4th 460, 478-479.) A writ of mandate may not be issued to compel the exercise of discretion in a particular manner. (*Helena F. v. West Contra Costa Unified School District* (1996) 49 Cal.App.4th 1793, 1799.)

Standard of Review

Generally, an inquiry into the validity of a final administrative order or decision extends "to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." The appellate court on appeal performs the same review as the trial court. (Code Civ. Proc., §. 1094.5, subd. (b); *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526.) When an administrative decision affects a fundamental vested right, however, the trial court exercises its independent judgment, weighing the evidence to determine whether the administrative

[2] LAMC section 91.106.4.1 provides in pertinent part: "When the department determines that the information on the application and plans is in conformance with this Code and other relevant codes and ordinances, the department shall issue a permit upon receipt of the total fees." LAMC section 91.105.5.4 identifies "the department" as the Department of Building and Safety.

findings are supported by a preponderance of the evidence. On appeal, the appellate court considers whether the trial court's finding is supported by substantial evidence. (*E.W.A.P., Inc. v. City of Los Angeles* (1997) 56 Cal.App.4th 310, 325 (*E.W.A.P.*); Code Civ. Proc., §§ 1094.5, subd. (c), 1094.6.)

The threshold issue here is whether the city's and Board's administrative decisions implicated Levy's fundamental vested rights. A right may be deemed fundamental "on either or both of two bases: (1) the character and quality of its economic aspect; (2) the character and quality of its human aspect." (*Interstate Brands v. Unemployment Ins. Appeals Board* (1980) 26 Cal.3d 770, 780.)

"'"'Whether an administrative decision substantially affects a fundamental vested right must be decided on a case-by-case basis. [Citation.] Although no exact formula exists by which to make this determination [citation] courts are less sensitive to the preservation of purely economic interests. [Citation.] In deciding whether a right is 'fundamental' and 'vested,' the issue in each case is whether the '"affected right is deemed to be of sufficient significance to preclude its extinction or abridgment by a body lacking judicial power."'"'" (*Metropolitan Outdoor Advertising Corp. v. City of Santa Ana* (1994) 23 Cal.App.4th 1401, 1403-1404 (*Metropolitan Outdoor*).) "The term 'vested' in the sense of 'fundamental vested rights' in an administrative mandate proceeding is not synonymous with the 'vested rights' doctrine relating to land use development. [Citation.] Courts rarely uphold the application of the independent judgment test to land use decisions. [Citation.] Cases upholding such application typically involve 'classic vested rights'—i.e., a vested right to develop property in a particular way." (*Amerco Real Estate Co. v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 783-784.) For example, an administrative decision that entirely drives an owner out of business would affect a vested fundamental right, and would thus be subject to independent review; but an administrative decision that merely restricts a property owner's return on the property or increases the cost of doing business would impact a mere economic interest, and would be subject to review for substantial evidence.

(*E.W.A.P., supra,* 56 Cal.App.4th at p. 326; *Metropolitan Outdoor, supra,* 23 Cal.App.4th at p. 1404.)

"'[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.] Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied.'" (*Arviv, supra*, 101 Cal.App.4th at p. 1349, quoting *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791.)

"Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (Code Civ. Proc., § 1094.5, subd. (c).)

Applying these principles, we conclude the trial court properly used the substantial evidence test in reviewing the city's and Board's decisions to demolish the five structures on Woodstock Drive and deny an extension of time for Levy to comply with abatement orders or complete an EIR. "[W]hen a developer starts a project without any permit or under an invalid permit—i.e., one that was issued in violation of existing zoning or environmental laws—the developer does not gain a vested right to complete the project; and, in the latter situation, the government is not estopped from challenging the validity of the permit even if the developers expended resources in reliance on it." (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 948.) The five houses on Woodstock Drive were constructed by Arviv pursuant to building permits that were obtained by subterfuge and subsequently revoked. The court in *Arviv* concluded Arviv himself possessed no vested right to complete the construction (*Arviv, supra,* 101 Cal.App.4th at pp. 1349-1350), and Levy offers no explanation why his rights should be

superior to Arviv's. On the contrary, his sole argument is that he succeeded to the rights of previous owners.

Levy argues the court in *Arviv* held Arviv himself had the right to complete construction on the five homes upon completing and certifying an EIR on the larger development, which Levy argues includes the right to forestall demolition of the homes. On the contrary, in the prior appeal Arviv argued only that he had a fundamental right to complete construction *without* an EIR. The court held he had no such right. It did not hold he had a right to complete construction once an EIR was certified. Even if it had, such a holding would not mean Levy had a vested right to delay city action eight years later.

The city's and Board's actions implicated no fundamental rights. Therefore, they were subject to substantial evidence review by the trial court. Our review is the same.

Substantial Evidence Supported the City's and Board's Actions

Levy makes no attempt to demonstrate the city's and Board's actions were unsupported by substantial evidence—he essentially ignores the issue, arguing instead that the city violated his Fourteenth Amendment Equal Protection rights. He thus waives the issue. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 855.)

At any rate, the actions were amply supported in the record. Construction that violates a municipal code constitutes a nuisance. (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255.) The city may order abatement of a nuisance after a public declaration that the nuisance exists followed by a hearing. (LAMC, § 7.35.2, subd. (c).) Building permits for the five Woodstock Drive houses were revoked in 2003, and by the time Levy obtained the property the city had spent nine years trying to get the successive owners to obtain proper permits. In the meantime, the structures, which remained vacant, deteriorated. Levy took no action to comply with the abatement orders from spring 2009, when he obtained the property, to October 2009, when the city finally issued a notice of intent to demolish the structures upon findings

that they were 77 percent damaged. The city and Board were therefore well within their authority to deny another continuance and order the structures demolished.

Levy argues the city violated his equal protection rights by refusing in October 2009 to grant him a continuance on the abatement hearing, whereas it had granted Popular Realty a de facto continuance in 2003 (by taking no action on its abatement orders) and granted Kapilow a six-month continuance in 2007. Citing no pertinent authority, Levy argues municipal government agencies "must apply the laws on the books equally," which the city failed to do here. The argument is without merit.

A successful equal protection claim may be "brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564.) But here, Popular Realty, Kapilow and Levy were not similarly situated, as they owned the property at different times over a period of nine years, during which the vacant structures on Woodstock Drive progressively deteriorated. Successive ownership does not by itself entitle each owner to the entitlements granted prior owners. If it did, each building permit and discretionary entitlement granted by the city would redound to all successive owners in perpetuity, and the city would be powerless ever to reevaluate its actions in light of changing circumstances. In any event, Levy was not treated differently from the prior owners. On the contrary, he directly benefitted from of the city's two previous decisions not to finalize abatement proceedings, and in that sense received the same treatment as the prior owners did. No owner received a third forbearance, which is what Levy essentially seeks here. Finally, even if Levy was similarly situated to the prior two owners and treated differently, the bare fact that the property had progressively deteriorated over a period of nine years by the time he obtained it provided a rational basis for the city finally insisting that the nuisance be abated.

DISPOSITION

The order is affirmed. Respondents are to recovers their costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.