Filed 1/30/18 Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS et al.,	B267816 (c/w B270442)
Plaintiffs and Appellants,	(Los Angeles County Super. Ct. No. BS142768)
v.	
CITY OF PALOS VERDES ESTATES et al.,	
Defendants and Appellants.	

APPEALS from a judgment and orders of the Superior Court of Los Angeles County. Barbara Ann Meiers, Judge. Affirmed in part, reversed in part, and remanded.

Law Office of Greg May, Gregory T. May; Broedlow Lewis, Jeffrey Lewis and Kelly B. Dunagan for Plaintiffs and Appellants Citizens for Enforcement of Parkland Covenants and John Harbison.

June Babiracki Barlow, Neil Katlin and Jenny Li for California Association of Realtors as amicus curiae on behalf of Plaintiffs and Appellants.

Lewis Brisbois Bisgaard & Smith, Roy G. Weatherup, Brant H. Dveirin and Allison A. Arabian, for Defendant and Appellant Palos Verdes Home Association.

Jenkins & Hogin, Christi Hogin, Gregg W. Kettles; Greines, Martin, Stein & Richland and Kent Lewis Richland for Defendant and Appellant City of Palos Verdes Estates.

Armbruster Goldsmith & Delvac and Damon Mamalakis for Defendants and Appellants Robert Lugliani, Dolores A. Lugliani, Thomas J. Lieb and the Via Panorama Trust.

In an effort to resolve litigation, the City of Palos Verdes Estates (the City), the Palos Verdes Homes Association (the Association), the Palos Verdes Peninsula Unified School District (the School District), and one Palos Verdes Estates homeowner, Robert and Dolores A. Lugliani (the Luglianis),[1] entered into a multifaceted and complicated settlement agreement that resulted in exchanges of money and certain real estate. Plaintiff John

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[1] It appears that the Luglianis are cotrustees of the Lugliani Trust, which owns the real property located at 900 Via Panorama in the City. Thomas J. Lieb is the trustee of the Via Panorama Trust U/DO May 2, 2012, which seems to own Parcel A. Like the parties, we refer collectively to all of these persons and entities as the Luglianis.

Harbison (Harbison), a neighbor of the Luglianis and Palos Verdes Estates homeowner, disapproved of the settlement, prompting him and Citizens for Enforcement of Parkland Covenants (CEPC) to file suit, challenging the transfers in that settlement. The trial court agreed with plaintiffs that the settlement violated deed restrictions governing the subject land and entered judgment in favor of plaintiffs and against the City, the Association, and the Luglianis.

The City, the Association, and the Luglianis appeal. We agree with the City that judgment should not have been entered against it; triable issues of fact exist as to whether the transfer of property between the City and the Association was proper. We do not agree with the Association and the Luglianis that their actions were proper; the transfer of property from the Association to the Luglianis violated certain deed restrictions. Thus, the trial court properly found for plaintiffs on this point. But, the judgment entered was overly broad. We remand the matter so that the judgment can be refashioned consistent with the allegations of plaintiffs' operative pleading. In light of our findings, we also reverse and remand the issue of attorney fees to the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

Initially purchased by a wealthy financier, the unincorporated area that became the City of Palos Verdes Estates was placed into the hands of the Commonwealth Trust Company for the development of a planned residential community. To accomplish this, the Commonwealth Trust Company placed various restrictions on the land in the 1920's.

Establishment Documents; Restrictions on the Property

In 1923, the Commonwealth Trust Company created and recorded a Declaration of Establishment of Basic Protective Restrictions, Conditions, Covenants, Reservations, Liens and Changes Affecting the Real Property to be Known as Palos Verdes Estates—Parcels A and B (Declaration No. 1).[2] After Declaration No. 1 was recorded, other declarations and amendments were recorded as to various tracts in the development as it grew.

On July 26, 1926, Bank of America, the successor-in-interest to the Commonwealth Trust Company, recorded Declaration No. 25, establishing the conditions, covenants, and restrictions for Parcel A. The declaration provides, in relevant part: "It will be the duty of [the Association] to maintain parks . . . and to perpetuate the restrictions."

Later, Bank of America amended Declaration No. 25 pertaining to Tract 8654, where the majority of Parcel A lies. This amendment designated Parcel A as Class F zoning. In areas zoned Class F, "no building, structure or premises shall be erected, constructed, altered or maintained which shall be used or designed or intended to be used for any purpose other than that of a public or private school, playground, park, aeroplane, or dirigible landing field, or accessory aerodrome or repair shop, public art gallery, museum, library, firehouse, nursery, or greenhouse, or other public or semi-public building, or a single family dwelling."

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[2] The Association was formed in 1923, the year Declaration No. 1 was created and recorded.

In 1931, Bank of America conveyed certain land along with Parcel A to the Association, subject to the restrictions contained in Declaration No. 1. The grant deed imposed some additional restrictions. Specifically, the "realty is to be used and administered forever for park and/or recreation purposes, for the benefit of the persons residing or living within the boundaries of" Palos Verdes Estates. Moreover, "no buildings, structures or concessions shall be erected, maintained or permitted upon said realty except such as . . . are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes." Finally, "no part of said realty shall be sold or conveyed by [the Association] except subject to the terms and conditions hereof; provided, however, that said realty, or any portion thereof, may be conveyed by [the Association] subject to the same conditions as herein contained with respect to the purposes of which said realty may be used, to a PARK COMMISSION, or other body suitably constituted by law, to take, hold, maintain and regulate public parks."

In 1940, Bank of America quitclaimed all of its interest in the land to the Association.

Meanwhile, in 1938, the Association conveyed 13 lots to the School District. That transfer was made subject to the existing restrictions of record, including the express condition that the properties be used only for school or park purposes.

In 1940, the Association conveyed land to the City in two deeds. A small portion of Parcel A was transferred in one of the deeds; the majority of Parcel A was transferred in a second deed. The Association placed several restrictions on these transfers to the City. Declaration No. 1 was made a part of the conveyance, and the Association repeated the same restrictions which Bank of

America placed in the 1931 deed. As is relevant to this litigation, the City was required to use the property for park purposes; no buildings could be constructed on the property; the property could not be conveyed by the City unless the conveyance was subject to the restrictions or to a body suitably constituted to maintain public land. Moreover, Parcel A was subject to a right of reversion if not used in compliance with the deed restrictions limiting its use.

School District Litigation

In 2010, the School District determined that it could not make use of Lots C and D for their restricted purpose and it desired to raise at least $2 million by selling the lots for residential development. When the City and the Association objected to the School District's plan, the School District filed a lawsuit against the City and the Association for quiet title and declaratory relief as to whether the deed restrictions and reversionary interest were still valid.

The City was later dismissed from the lawsuit. Then, following trial, the trial court entered judgment in favor of the Association, finding that there was still a binding contract between the School District and the Association and that the 1938 deeds were still enforceable. The School District appealed from the judgment, and the Association cross-appealed from the trial court's order denying its request for attorney fees.

Memorandum of Understanding

In 2012, while the School District's appeal and the Association's cross-appeal were pending, the School District, City, Association, and the Luglianis entered into a memorandum of understanding (MOU) that settled the School District litigation. In exchange for a dismissal of the appeal and cross-appeal, the

following transfers occurred: (1) The School District gave Lots C and D to the Association; (2) The Association gave Lots C and D, along with $100,000, to the City; (3) The City transferred Parcel A to the Association; (4) The Association transferred Parcel A to the Luglianis for $500,000; and (5) In a separate donative agreement, the Luglianis contributed $1.5 million to the School District.

II. Procedural Background

Plaintiffs filed suit on May 13, 2013. The second amended complaint (SAC), which is the operative pleading, alleges three causes of action against the City, the Association, and the Luglianis:[3] (1) Declaratory relief against all of the defendants, pursuant to which plaintiffs seek a declaration that the 2012 deeds are invalid for violating the land use restriction that the property remain parkland; (2) Waste of public funds/ultra vires actions against the City; and (3) Abatement of nuisance per se against the Luglianis. The SAC specifically sought relief related to Parcel A, although it also requested in general, generic terms, "such other and further relief as the Court may deem just and proper."

Plaintiffs' Motion for Summary Judgment

On December 5, 2014, plaintiffs filed a motion for summary judgment or summary adjudication against all defendants. They argued, inter alia, that the 2012 deeds violate the 1940 deed restrictions precluding structures on the panorama parkland and

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[3] Originally, the lawsuit named the School District as a defendant. Plaintiffs voluntarily dismissed their complaint without prejudice against the School District on May 5, 2014.

by conveying property to the Luglianis for private purposes, as opposed to for public parks.

Defendants opposed the motion. Among other things, they argued that plaintiffs were either bound by the actions of the Association or do not have standing, the actions of the Association are protected by the business judgment rule, and the reconveyance of the property from the City to the Association extinguished the 1940 deed restrictions under the merger doctrine.

The City's Cross-Motion for Summary Judgment

In its motion for summary judgment, the City argued that its transfer of Parcel A to the Association was permissible. In so arguing, the City noted that it was "not required to own [Parcel] A in order for the deed restrictions to have force and effect. The deed restrictions run with the land and bind whoever owns the property."

The Association and Luglianis joined in the City's motion.

Trial Court Order and Judgment

After entertaining oral argument, the trial court issued a lengthy and detailed ruling granting plaintiffs' motion for summary judgment and denying the City's motion.

Judgment for plaintiffs was entered. As is relevant to the issues raised in this appeal, the judgment pertains to more than Parcel A; in particular, the judgment provides: "As to all real property located within the City and Association's jurisdiction that are subject to the same land use restrictions set forth in the Establishment Documents or the 1940 Deed Restrictions, the City and Association are enjoined from entering into any contracts or taking any actions to eliminate or modify those deed

restrictions unless the Association first complies with the" certain amendment procedures set forth in the establishment documents.

Defendants timely appealed.

Plaintiffs' Motion for Attorney Fees

Later, plaintiffs moved for attorney fees "jointly and severally against all defendants." The trial court granted their motion, awarding plaintiffs $235,716.88 in attorney fees against all defendants. Defendants timely appealed from this order as well.

DISCUSSION

I. *Standard of review on summary judgment*

"A trial court properly grants summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court's decision de novo." (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

Like the trial court, "[w]e first identify the issues framed by the pleadings, since it is these allegations to which the motion must respond. Secondly, we determine whether the moving party has established facts which negate the opponents' claim and justify a judgment in the movant's favor. Finally, if the summary judgment motion prima facie justifies a judgment, we determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citation.]" (*Torres v. Reardon* (1992) 3 Cal.App.4th 831, 836.) "[W]e construe the moving party's affidavits strictly, construe the opponent's affidavits liberally, and resolve doubts about the propriety of granting the motion in favor of the party opposing it." (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19.)

II. *The trial court erroneously granted plaintiffs' motion for summary judgment against the City*

The trial court granted plaintiffs' motion for summary judgment against the City on the grounds that the transfer of property (Parcel A) from the City to the Association amounted to an ultra vires act. We agree with the City that this was error. Pursuant to the 1940 deed, the City was specifically allowed to reconvey Parcel A to the Association. And, the 1940 deed permitted the City to convey the property to a category of recipients, of which the Association was one. Because the Association was eligible to receive Parcel A under the plain language of the deed, the City may not have done anything wrong by transferring Parcel A to it. (*Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 361 [because the City's action was legal, it could not violate Code Civ. Proc., § 526a].)

But we cannot agree with the City that it was entitled to summary judgment. The circumstances surrounding the complicated transfer of property, specifically Parcel A, and money are curious. While the City *may* have had the right to transfer Parcel A to the Association, it may not have had the right to do so if it knew that the Association was going to transfer Parcel A to the Luglianis. And it is disputed whether the City used and/or will continue to use public monies to fund alleged illegal efforts, namely those that violate the deed restrictions. Because it is disputed whether the City had the right to transfer Parcel A under the circumstances presented here, we conclude that neither plaintiffs nor the City was entitled to summary judgment.

III. *The trial court rightly granted plaintiffs' motion for summary judgment against the Association, but issued an overly broad judgment*

In the first cause of action, plaintiffs seek a declaration that the 2012 deeds purporting to convey Parcel A to the Luglianis are void because they violate the restriction that Parcel A be used exclusively as a park for the use and benefit of City residents. The trial court granted plaintiffs summary adjudication of this cause of action, and we agree.

As set forth above, the Association owned the subject property until June 14, 1940. On that date, the Association deeded the property to the City. The June 14, 1940, deeds contain multiple restrictions, including the restriction that the "realty is to be used and administered forever for park and/or recreation purposes only . . . for the benefit of the (1) residents and (2) non-resident property owners within the boundaries of the property heretofore commonly known as 'Palos Verdes Estates.'"

In spite of that undisputed language, the Association transferred the property to the Luglianis as part of the MOU. The September 2012 deeds conveying the property authorize the construction of "a gazebo, sports court, retaining wall, landscaping, barbeque, and/or any other uninhabitable 'accessory structure.'" Moreover, the property would not be accessible by the public. Such a transfer violates the restrictions in the original deeds.

A. Association's power to enter into a binding settlement

In urging reversal, the Association argues that triable issues of material fact exist as to whether its members were bound by the settlement negotiated on their behalf. While the

Association may have had the power to defend and settle the school district litigation, it offers no authority in support of its contention that it could transfer Parcel A to the Luglianis to accomplish that objective.

The Association relies upon *Duffey v. Superior Court* (1992) 3 Cal.App.4th 425 (*Duffey*) for the proposition that the MOU was binding upon every member of the Association. The Association's reliance upon *Duffey* is misplaced. *Duffey* does not hold that an Association may enter into any sort of settlement on behalf of its homeowner members. Nothing in *Duffey* suggests that any settlement that a homeowners association enters, even if it contradicts the plain restrictions of grant deeds, is binding on every member of that homeowners association.

The Association further argues that anyone who disagreed with the settlement as reflected in the MOU "needed to voice their concerns before the settlement was approved. They had an opportunity to do so *before* the settlement was formally approved. [Citation.] After that point, the settlement was binding on every member of the" Association. We cannot agree. There is no evidence that the homeowners had an opportunity to object to the MOU,[4] and the Association offers no legal authority to support its proposition that a homeowner must object to an illegal term of a contract or else forever waive their objection.

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[4] Mr. Sidney Croft, general counsel to the Association declared that he and "numerous residents" expressed opinions for and against the MOU. If homeowners spoke up against the MOU, the Association does not explain why their comments would not amount to an objection to the MOU.

B. CEPC's standing

The Association further argues that CEPC lacked standing to enforce the restrictive covenants because not all CEPC members own property in the City. But, it is undisputed that at least one member of CEPC—Harbison—does own property in Palos Verdes Estates. So long as one member of CEPC has standing, CEPC does as well. (*Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005) 132 Cal.App.4th 666, 673.)

C. Business judgment rule/judicial deference

Next, the Association argues that triable issues of material fact exist as to whether the Association's settlement is entitled to judicial deference or protection under the business judgment rule.[5] Quite simply, by disregarding the express restrictions on the grant deed, the Association's decision to enter into the MOU is not entitled to any sort of deference. Because of the express restrictive language in the grant deeds, *Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863 and *Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858 are readily distinguishable.

Butler v. City of Palos Verdes Estates (2005) 135 Cal.App.4th 174 (*Butler*) does not compel a different conclusion. In *Butler*, residents of Palos Verdes Estates sued the City and its officials, opposing a peafowl management program that permitted a minimum peafowl population on City property. Looking at the words of the City's deed restrictions, and understanding them in their ordinary and popular sense, the

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[5] We reach the merits of this argument without deciding whether the Association waived it.

Court of Appeal concluded that the City, like any other property owner, could not raise peafowl on its property. But the restriction could not be understood to mean that the City could not count, trap, and remove feral peafowl and otherwise act in accordance with the City's peafowl management program. (*Id*. at pp. 183–184.)

Like the *Butler* court, we too have looked at the deed restrictions at issue, understanding them in their ordinary and popular sense. And we conclude that the deed restrictions mean what they say—Parcel A is intended to be parkland for the community.

D. Trial court's order tentatively striking expert declarations

As for the Association's challenge to the trial court's order "tentatively str[iking]" its experts' declarations, it is not appealable. (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1121, fn. 3.)

E. Association's intent to bind itself to covenants

The Association further argues that there are triable issues of fact as to whether it intended to bind itself to the restrictive covenants contained in its own deeds of undeveloped parkland to the City. Aside from the fact that this argument has been forfeited on appeal because it was not raised below (*Twenty-Nine Palms Enterprises Corp. v. Bardos* (2012) 210 Cal.App.4th 1435, 1450), it fails on the merits.

On July 5, 1923, the developer for Palos Verdes Estates recorded Declaration No. 1, establishing basic land use restrictions for the real property located in what later would be known as the City. On July 26, 1926, Bank of America recorded Declaration No. 25, establishing certain conditions, covenants,

and restrictions. Declaration No. 25 sets forth one purpose of the Association: "It will be the duty of this body to maintain the parks . . . and to perpetuate the restrictions." In 1931, Bank of America deeded Parcel A to the Association, subject to certain conditions, restrictions, and covenants. One of those conditions was that the parkland "be used and administered forever for park and/or recreation purposes." Another condition forbids the Association from selling or conveying the parkland except to a body that could hold and maintain the parkland as a public park. In light of these facts and this history, there is no triable issue of fact as to whether the Association intended to bind itself to the restrictive covenants.

F. Association's alleged right to sell parkland

Furthermore, the Association argues that, pursuant to Article II, Section 4, it has the "right and power to sell parkland." We disagree. Article II, Section 4 provides, in relevant part, that the Association "shall have the right and power to do and/or perform any of the following things, for the benefit, maintenance and improvement of the property and owners thereof at any time within the jurisdiction of the Homes Association, to-wit: [¶] (a) To maintain, purchase, construct, improve, repair, prorate, care for, own, and/or dispose of parks, parkways, playgrounds, open spaces and recreation areas . . . for the use and benefit of the owners of and/or for the improvement and development of the property herein referred to." Transferring Parcel A to the Luglianis does not fall within the scope of this language as the property would no longer be for the "use and benefit" of the property owners.

The Association similarly directs us to Article II, Section 4, subdivision (i), which provides, in relevant part, that the

Association has the right "[t]o acquire by gift, purchase, lease or otherwise acquire and to own, hold, enjoy, operate, maintain, and to convey, sell, lease transfer, mortgage and otherwise encumber, dedicate for public use and/or otherwise dispose of, real and/or personal property either within or without the boundaries of said property." This language does not give the Association the right to dispose of any and all property within the City. Rather, it allows the Association to dispose of real property that it acquires by a means other than via the subject grant deeds.

Moreover, common law precludes a city from selling a public park to a private party. (See *Hermosa Beach v. Superior Court of Los Angeles* (1964) 231 Cal.App.2d 295, 296; *County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 575– 576; *Save the Welwood Murray Mem'l Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1016.) The Association attempts to distinguish these cases on the grounds that "the cities retained title to the deed restricted property and intended to use it or allow it to be used for another purpose, which the courts would not allow. Moreover, none of them involved challenges to the rights and duties of a homeowners association operating under governing documents, or a quitclaim to the grantor." We cannot agree with the Association. As set forth in *Roberts v. Palos Verdes Estates* (1949) 93 Cal.App.2d 545, 547: "[W]here a grant deed is for a specified, limited and definite purpose, the subject of the grant cannot be used for another and different purpose." Rather, "[t]he terms of the deed alone are controlling." (*Id.* at p. 548.) Here, the terms of the deed mandate that Parcel A be used as parkland; Parcel A could not have been transferred to a private homeowner like the Luglianis.

G. Judicial estoppel

We reach this conclusion without making any determination regarding the doctrine of judicial estoppel.

H. Indispensable party

The Association asserts that summary judgment was improper because an indispensable party—the School District—is not a party to this litigation. We conclude that the trial court did not abuse its discretion in finding that the School District is not an indispensable party. (*County of San Joaquin v. State Water Resources Control Bd.* (1997) 54 Cal.App.4th 1144, 1153.) As pointed out by plaintiffs, the Association's argument rests entirely upon speculation: "[T]he Luglianis might want" the monies paid to others returned; "This could result in the unwinding of the" MOU.

Moreover, plaintiffs' SAC seeks to void the 2012 deed transferring Parcel A. The School District is not a party to that transfer. While the undoing of the transfer of Parcel A will impact the Luglianis, it is conjecture whether the Luglianis will seek a refund of their $1.5 million "donation" to the School District. Speculation is insufficient to deny summary judgment.

I. Merger doctrine

Next the Association contends that triable issues of material fact exist as to whether the doctrine of merger extinguished encumbrances on Parcel A. Pursuant to the merger doctrine, when both the dominant and servient tenements come under common ownership, any easement on the servient tenement is extinguished as a matter of law. (*Zanelli v. McGrath* (2008) 166 Cal.App.4th 615, 623.) The rationale underlying this doctrine is "to avoid nonsensical easements—where they are

without doubt unnecessary because the owner owns the estate." (*Beyer v. Tahoe Sands Resort* (2005) 129 Cal.App.4th 1458, 1475.)

Although not entirely clear, it seems that the Association is arguing that when the City transferred Parcel A back to the Association in 2012, the deed restrictions, which are easements, were extinguished. Like the trial court, we cannot agree. The deed restrictions are not easements.

J. Relief granted is overly broad

Even though we agree with the trial court that summary judgment was proper, we find that the trial court's injunction and judgment were overly broad. In the SAC, plaintiffs sought relief regarding Parcel A only. Yet the trial court went beyond the requested relief and made orders regarding "all real property" in the City. Even though the SAC asks for "such other and further relief as the Court may deem just and proper," the trial court did not have discretion to issue a judgment beyond the scope of the issues raised in the SAC. (*Wright v. Rogers* (1959) 172 Cal.App.2d 349, 367–368.) Stated otherwise, the judgment is not just and proper. Therefore, we remand the matter to the trial court to modify the judgment by fashioning a new injunction consistent with plaintiffs' demand in the SAC.

IV. *Attorney Fees*

Defendants challenge the award of attorney fees awarded to plaintiffs.

Code of Civil Procedure section 1021.5 provides, in relevant part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the

general public or a large class of persons [and] (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate." We review a trial court's award of attorney fees for abuse of discretion. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 152.)

Here, the public did benefit from this litigation—namely through the protection of a public park. (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 833.) And, defendants have not argued or demonstrated how the amount of fees awarded was inappropriate. But, as set forth, *ante*, (1) plaintiffs were not entitled to summary judgment against the City, and (2) the judgment is overly broad and must be refashioned on remand. It follows that we reverse the attorney fee award against the City. As against the Association and the Luglianis, the issue of attorney fees is remanded to the trial court for recalculation.

V. *The Cross-appeal is moot*

In light of our decision on defendants' appeal, as plaintiffs concede, the issues raised in plaintiffs' cross-appeal are moot.

DISPOSITION

The order granting plaintiffs' summary judgment against the City is reversed. The order denying the City's motion for summary judgment is affirmed. The order granting summary judgment to plaintiffs and against the Association and the Luglianis is affirmed. The matter is remanded to the trial court so that a judgment consistent with the relief requested by plaintiffs in the SAC may be fashioned. The order awarding attorney fees to plaintiffs and against all defendants is reversed and remanded to be recalculated at this point as against the Association and the Luglianis only. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.