



Case No. BC311061

CALENDAR: 3/14/05

COMPLAINT FILED: 02/24/2004

TRIAL DATE: 5/23/05

MOTION FOR SUMMARY JUDGMENT

Dept. 58

MOVING PARTY: Plaintiff, Melvin Morris
Attorney: Robert D. Goldberg
Clark & Goldberg

RESPONDING PARTY: None; No opposition filed.

TENTATIVE RULING:

GRANT; Moving party to prepare the order and judgment thereon.

ANALYSIS:**A. Statement of the Law**

A motion for summary judgment shall be granted if all the moving papers show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CCP §437c(c). The general rule for summary judgments is to construe the moving party's evidence strictly and the nonmoving party's evidence liberally. *Binder v. Aetna Life Ins.* (1999) 75 Cal. App. 4th 832, 838. "At the summary judgment stage the judge's function is not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.... [Citation]. Thus, to the extent the parties' evidence is in conflict, the facts and inferences supported by the plaintiff's evidence must be accepted as true." *Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 83 (internal quotations omitted).

The moving party bears a burden of production to make a prima facie showing of the nonexistence of any genuine issue of material fact. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 845. If he carries his burden of production, he causes a shift: the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a genuine issue of material fact. *Id.* "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the

applicable standard of proof." *Id.* The Plaintiff must produce evidence that is of sufficient quality to allow the trier of fact to find the underlying fact in favor of the party opposing the motion for summary judgment. *Id.* at 850. The evidence must be more than simply speculation or conjecture. *Lineaweaver v. Plant Insulation Co.* (1995) 31 Cal.App.4th 1409, 1421; *McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1105. Any doubts as to whether there are any triable issues of fact are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.

Plaintiff has a duty to file and serve a separate statement of undisputed facts in support of a motion for summary judgment. "This is the Golden Rule of Summary Adjudication: if it is not set forth in the separate statement, *it does not exist*. Both the court and the opposing party are entitled to have all the facts upon which the moving party bases its motion plainly set forth *in the separate statement*." *Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 929. Moreover, the opposing party has a reciprocal obligation to include a separate statement in his or her opposition papers which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. *Frazer v. Seely* (2002) 95 Cal. App. 4th 627, 636.

Generally the trial court should use a three-step analysis in evaluating a motion for summary judgment. "The three steps are (1) identifying the issues framed by the pleadings, (2) determining whether the moving party has made an adequate showing that negates the opponent's claim, and (3) determining whether the opposing party has raised a triable issue of fact." *Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 491. These steps reflect the series of burden shifts. *Id.*

B. Application

The Plaintiff has met its burden of production. Plaintiff has produced evidence that Ordinance 2088 and 2090 are invalid. Sec, UMF 43-84. Plaintiff's argument that Ordinance 2088 is void as a subsequent interim zoning ordinance is persuasive. It was adopted in violation of Gov. Code §65858(e) as a subsequent interim moratorium affecting the same property. *Martin v. Superior Court* (1991) 234 Cal.App.3d 1765 ("ordinance imposing a moratorium on the development of... property which purported to take effect beyond the termination of the first ordinance or any extension of the ordinance... violates the plain meaning of section 65858, subdivision (e), and can be of no further force or effect."). Further, Plaintiff's argument that 2090 is invalid is also persuasive, based on the lack of notice. See, *Sounhein v. City of San Dimas* (1992) 11 Cal.App.4th 1255, 1260. Thus, Plaintiff has produced sufficient evidence to meet its burden that there are no valid Ordinances in place that could legally restrict its right to continue construction. Furthermore, Plaintiff has adequately met its burden of producing evidence that it has vested rights to continue the construction of the property pursuant to *Blue Chip Properties v. Permanent Rent Control Bd* (1985) 170 Cal.App.3d 648 and that the City is

estopped from enforcing the zoning ordinances pursuant to Griffin v. County of Marin (1958) 157 Cal.App.2d 507. See, UMF 4 - 42.

This is an unopposed motion for summary judgment. Defendant has not met its burden of showing that there are triable issues of fact. Therefore, the Motion is granted.