

May 12, 1988

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

Guedalia et al., v. Cleator, et al.

Plaintiffs filed suit seeking damages for a conspiracy to deprive them of their right to build a 12 unit condominium complex in the Uptown area of San Diego. The defendants included former City Councilman William Cleator and Ronald Roberts, a member of the Planning Commission at the time. Both the Superior Court and Court of Appeal held that important issues had been decided against plaintiffs in previous litigation and plaintiffs were precluded from seeking damages against the defendants in this case.

BACKGROUND

In 1983, plaintiffs Irwin Guedalia and James Martinez sought a Hillside Review Permit for construction of a 12-unit condominium project near Balboa Park. The Planning Department granted the permit but a neighbor, John Lomac, filed an appeal with the City Planning Commission. The Commission denied the appeal which had the effect of upholding the grant of the permit. Mr. Lomac then appealed to the City Council. The City Council, on August 2, 1983, upheld the appeal which had the effect of denying the permit.

Plaintiffs filed suit against the City Council seeking a Writ of Mandate to compel the issuance of the permit. Plaintiffs claimed, inter alia, that the Council's decision to both hear the appeal, and uphold the appeal, was not supported by the evidence. The City denied the allegations.

On November 14, 1983, the Superior Court, the Honorable Jack Levitt presiding, denied the Writ of Mandate. Plaintiffs moved for a new trial on the theory that former Councilman Cleator met with John Lomac at plaintiffs' property, prior to the hearing before the City Council, to discuss the case. Plaintiffs claimed that meeting deprived them of a fair hearing before the Council.

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The City opposed the motion and, on May 1, 1984, the Superior Court, the Honorable Ben Hamrick presiding, denied the motion. The relevant portion of that decision was as follows:

"2. The contention that Councilman Cleator acted improperly and violated the Brown Act in meeting with Mr. Lomac prior to the hearing

would not, if true, constitute prejudicial error since petitioners were given a full hearing and the vote of the Council with-out Mr. Cleator's vote would be sufficient to support its decision. Also, no showing has been made that this newly discovered evidence could not have been discovered prior to petitioners' hearing on its petition for writ of mandate." Emphasis added  
Appellants did not appeal the judgment denying the writ.

#### LITIGATION

On April 14, 1986, plaintiffs filed the instant action alleging the tort of conspiracy and "interference with a business relationship." Defendants William Cleator and Ronald Roberts, represented by this office, demurred to the complaint on the grounds that, inter alia, the complaint was barred because the prior litigation determined that plaintiffs were not injured by the actions of defendants. A hearing on the demurrer was held on September 2, 1986 before the Honorable Arthur Jones. The demurrer was sustained without leave to amend.

On October 31, 1986, plaintiffs filed a notice of appeal on that ruling. Oral argument was heard before the Court of Appeal on March 9, 1988. In a decision filed March 11, 1988, the Court of Appeal upheld the ruling of the lower court. The court held that the prior litigation found no damage to plaintiffs in the denial of the Hillside Review Permit and the actions of the defendants. No complaint could now be brought on the same set of facts.

#### DISCUSSION

This case is related to the issue of representation of local community planning groups recently considered by the Council. Plaintiffs have recently filed new litigation, over essentially the same facts, but against defendants John Lomac and Jim Kelley-33

Markham, who were members of the Uptown Community Planners, a volunteer local planning group. This office is currently monitoring that litigation at the request of the Council.

Deputy City Attorney Leslie J. Girard represented defendants William Cleator and Ronald Roberts in the Superior Court and Court of Appeal.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

LJG:lh:Lit(x043.1)  
RC-88-29