

April 29, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

THE PUTNAM FOUNDATION, INC., ETC., THE SAN DIEGO MUSEUM OF ART, ETC. V.
THE CITY OF SAN DIEGO, COMMITTEE OF 100, SAN DIEGO SUPERIOR COURT
CASE
NO. 629118

At issue in this case is the City's grant of a construction permit to the Committee of 100 to construct arcades in Balboa Park near the Timken Gallery as a gift to the City. Plaintiffs petitioned the Court for a Writ of Mandate to prohibit the construction on the ground that the City failed to follow proper procedures, particularly concerning notice, when it accepted the gift and granted the permit.

Deputy City Attorney Peggy J. McCarberg, on behalf of the City, filed a Motion for Judgment on the Pleadings requesting that the lawsuit in its entirety be dismissed on the ground that it was filed too late. The Superior Court granted the motion and dismissed the entire case.

At this time it is unknown whether plaintiffs will appeal the decision. Even if an appeal is filed, it will not automatically stop construction of the arcades although plaintiffs have the right to request a court order that construction be stayed pending appeal.

At this time, construction can begin on the arcades at Balboa Park. Apparently, the Committee of 100 is negotiating a construction contract. We will keep you informed of further developments in the case and are available to answer any questions.

Respectfully submitted,
JOHN W. WITT
City Attorney

PGM:dv:Lit.
cc David Twomey, Asst. Director
Park & Recreation Dept.
RC-91-22