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## Legal Battles Heat Up Over Rent Control

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Long considered bastions of affordable housing in California, mobile home parks' low monthly space rents are big draws for seniors and others on fixed incomes. To keep those fees down, dozens of cities and counties across the state drafted rent control ordinances in the past few decades as housing became more scarce and property values shot up.

Now trailer parks are increasingly duking it out in court with local governments to try to wrest back power over rents, and legal observers say recent judicial decisions could impact how municipalities approach space fee regulations.

One of the most significant cases, observers said, was a 9th U.S. Circuit Court of Appeals three-judge panel's ruling in September holding that a local ordinance - which restricts yearly mobile home space lease hikes to 75 percent of increases in the local Consumer Price Index - too strongly favored tenants and amounted to an unconstitutional Fifth Amendment regulatory taking.

The judges held the city of Goleta in Santa Barbara County owed a park damages because of flaws in the ordinance, and sent the case back to the trial court to determine how much the city owes the owners. That hearing is on hold while the appellate court weighs Goleta's request for an en banc hearing in the case. *Guggenheim v. City of Goleta*, 2009 DJDAR 14205.

The decision, the first such ruling by a federal appellate court, is expected to crank up arguments and appeals in several other pending cases involving local trailer park fee restrictions statewide. It's also expected to embolden other park owners to file similar suits, attorneys said.

"Certainly now there is strong judicial precedent at the federal level that would suggest that extraordinarily onerous rent control ordinances would entitle a [mobile home park] owner to compensation," said Hans A. Lapping, a shareholder with Miller Starr Regalia in Walnut Creek.

Lapping, who was not involved in the case, has represented park owners in sales of their developments to other parties. He's also written extensively about trends in the developments for the firm's book on real estate law.

California is one of a few states in which local governments can apply rent control to parks. Statewide, 108 of California's 538 cities and counties have laws on the books keeping mobile home space leases in check.

About a quarter of the state's 5,381 mobile home parks fall under such ordinances.

The scope of the local laws vary, but most provide for only nominal space rent increases from year to year, and some tie the rent hikes to increases in retirees' Social Security earnings. Depending on location and the level of rent control, space leases range from a couple of hundred dollars to more than \$1,000

per-month.

"Rent control is very contentious," said Catherine Borg, legislative advocate for the Western Manufactured Housing Communities Association, a Sacramento-based nonprofit advocacy group for mobile home parks and developers statewide.

Her group is closely watching several cases brewing across the state.

Much of the litigation involving mobile home space leases boils down to the concept of "vacancy control," in which half of the municipalities with rent control allow those lease caps to transfer when a resident sells his or her coach.

Park owners in such cases complain that mobile home sellers have been raking in profits several times what their homes are worth because they come with guaranteed monthly fee restrictions on the space lease. The dramatic "premium," they argue, constitutes a regulatory Fifth Amendment taking.

The park owners have gained ground in recent cases.

In one high-profile suit, Northern District Chief Judge Vaughn R. Walker of San Francisco agreed in April with the owner of the 396-unit Contempo Marin mobile home development in San Rafael. He found San Rafael's rent control ordinance qualified as a taking because its enforcement enabled "the singular purpose of transferring the value of land from one private party to another."

Under the ruling, the ordinance becomes void in a decade.

The decision is on appeal. *MHC Financing Ltd. v. City of San Rafael*, C-00-03-785VRW (S.R. Cal., filed Jan. 29, 2008).

The 9th Circuit judges' decision in Guggenheim added more teeth to the issue. In that case, Ken Guggenheim, owner of the 150-space, 60-year-old Rancho Mobile Home Park in Goleta in Santa Barbara County, sued the city in 2002 over its rent control law.

Besides capping any annual rent increase on a mobile home "pad" to 75 percent of the increase in the local Consumer Price Index, Goleta's law allows a park owner to collect a one-time 10 percent rent increase when a coach is sold. The law is based on an identical Santa Barbara County ordinance.

Guggenheim claimed the regulation violated the takings, due process and equal protection clauses of the Constitution. U.S. District Judge Florence-Marie Cooper in Los Angeles initially sided with the mobile home park owners in 2004. But she reversed herself after a U.S. Supreme Court case, *Lingle v. Chevron U.S.A. Inc.* 554 U.S. 528 (2005) overturned one of the theories on which she had ruled.

In reversing Cooper, the divided 9th Circuit panel cited an example in which a \$12,000 mobile home under rent control would sell for \$100,000. The judges said the city's ordinance amounted to a taking in that it was a "wealth transfer" from the owners to the tenants.

The statute had caused "substantial economic hardship" to the park owners, Circuit Judge Jay S. Bybee wrote.

"Property values have increased in the area by 225 percent in the time that the Park Owners have owned the Park," Bybee wrote. "yet the Park Owners have not been permitted to increase rents beyond 75 percent of the annual increase in the CPI.

"This is a zero-sum game; loss to the Park Owners has become gain to their tenants," Bybee wrote.

He was joined by Circuit Judge Alfred T. Goodwin.

Circuit Judge Andrew J. Kleinfeld dissented, saying the trailer park owners were out of luck because they bought the property knowing the rent control ordinance had been on the books for years.

Attorneys with Burke, Williams & Sorensen in Los Angeles, who represent Goleta in the case, could not be reached Friday to say whether the city plans to change its ordinance in the wake of the decision.

Other rulings have gone in favor of cities.

Santee, in San Diego County, has scored several wins in suits fighting its mobile home rent control ordinance, passed in 1998. Two years ago, San Diego County Superior Court Judge Kevin Enright ruled that the owner of the Meadowbrook Mobilehome Park was not economically harmed by the city's law. *MHC Financing Limited Partnership Two v. City of Santee*, GIC777094 (San Diego Super. Ct., filed 2008).

James B. Gilpin, a partner at Best Best & Krieger in San Diego who represents Santee in the litigation, said the issue of mobile home park rent control is far from clear-cut legally.

But he said cases such as *Guggenheim* and *MHC Financing Ltd. v. City of San Rafael* could make cities take a closer look at their ordinances.

"When and if the decisions become final and precedential, I think you will see some adjustments," Gilpin said.

David J. Bradford, a partner with Jenner & Block in Chicago who represents Meadowbrook owner MHC - now called Equity Lifestyles Properties Inc. - said his client is working on an appeal in the Santee litigation. He expects the takings findings in *Guggenheim* to be part of the appellate arguments.

Other types of litigation are also popping up on the mobile home space fee front.

In several suits across the state, cities are fighting efforts by parks to subdivide their lots or allow residents to buy the land on which coaches sit.

In one hard-fought case, the owners of the Stardust Mobile Estates park in Ventura won approval last month to sell their 125 spaces to residents. According to state law, once the first sale is completed - which could be this year or next - the neighborhood will no longer be bound by the city's rent control policy.

The owners will have several years to raise the rents to market rates.

Mobile home legislation is also brewing.

A measure pending in the state Senate, AB 761, is attempting to establish statewide "vacancy decontrol" in mobile home parks, gradually phasing out restricted rent transfers when coaches sell.

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