



CIRCUIT COURT OF OREGON
Fifteenth Judicial District

JESSE C. MARGOLIS
CIRCUIT JUDGE

Curry County Courthouse
P.O. Box 810
Gold Beach, Oregon 97444
541-247-4511

June 15, 2007

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Re: Freeman Properties East/West v. Oregon Department of Administrative Services, et al;
Curry County Circuit Court Case No. 06CV0772

Dear Counsel,

This matter came before the Court on June 11, 2007 for argument on Defendants/respondents' Motion for Summary Judgment. The matter was taken under advisement at the conclusion of the hearing. This letter is provided to advise the parties of the Court's decision.

As a preliminary matter the Court considered whether the Circuit Court properly has jurisdiction in this matter. The record shows that Plaintiffs' Measure 37 claims were denied rather than accepted. Therefore this Court has jurisdiction pursuant to ORS 183.484.

The parties have agreed to facts which they believe are sufficient for determination of the present summary judgment motions. It is undisputed that Plaintiffs/petitioners Freeman Properties East, LLC, and Freeman Properties West, LLC are owners of property in Curry County, and that all Plaintiffs/petitioners have filed a claim under Measure 37 (codified as ORS 197.352) concerning that property. The individual Plaintiffs/petitioners, Cynthia Von Lom and Mark Silverstein are members of the LLCs and claim a property interest in the subject property which they assert stems from their membership in the LLCs. They also are children of Edward Freeman.

The LLCs acquired the property by deed on or about August 12, 2003. The LLCs are successors in interest to the ownership of the property by Edward W. Freeman. The purpose of the transfer of the property to the LLCs was, at least in part, for estate planning purposes.

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In 2005, the LLCs and members Van Lom and Silverstein submitted Measure 37 claims. Those claims were denied by the State for two reasons. The first reason was that the individual Petitioners were not owners of the property and therefore had no right to Measure 37 relief. The second reason was that the LLCs acquired the land long after restrictive land use regulations were put in place, and therefore they were not entitled to Measure 37 relief.

The issues here, which involve legislative interpretation, may be framed essentially as follows:

1. Do the current owner LLCs have "family members" for purposes of Measure 37?
2. Are the individual Plaintiffs/petitioners Van Lom and Silverstein present owners of the property and therefore entitled to claim relief pursuant to Measure 37?
3. Does this Court have jurisdiction in relation to the second claim for relief?

In regard to the first issue, Defendants/respondents argue that the statutory language defines "family member" and that the definition does not include individuals as family members of a legal entity such as an LLC when that LLC is an owner, although it does include a legal entity owned by any one or combination of family members or the owner of the property. Plaintiffs/petitioners argue that family relationships are, as a matter of logic, reciprocal and that the definition contained in Measure 37 of the term "family member" is ambiguous. The language of Measure 37 is clear in relation to the definition of who a family member is. That definition does not include individuals as family members of an LLC or legal entity when that legal entity is the owner. Plaintiffs/petitioners' interpretation of that definition would require the Court to ignore the fact that the legislation clearly defines those who may be considered family members. Because that language is clear, the Court need not consider the intent of the legislation. It may be that there is an incongruity here created by the lack of a definition within Measure 37 that provides for a reciprocal relationship in the case of a legal entity, but that incongruity is not a flaw in the State's argument. Plaintiffs/petitioners' interpretation requires more than just a linguistic analysis or interpretation of the existing language of Measure 37, it requires one to add language that does not exist within the Measure.

In regard to the second issue, ORS 63.239 expressly states that a member of a limited liability company has no interest in specific limited liability property. Measure 37 defines owner as "owner is the present owner of the property, or any interest therein". To interpret Measure 37 to mean a membership interest in an LLC is a property interest in specific property of the LLC would be contrary to ORS 63.239. In a vacuum, another interpretation of Measure 37 is plausible, but when read in context with ORS 63.239, the Court may rest on a first level textual analysis because only a single construction is plausible. Plaintiffs/petitioners Von Lom and Silverstein are not owners of the property. Only the owner or owners of property may be entitled to compensation or waiver under Measure 37.

Given the conclusions above, the issue regarding the claim for compensation is rendered moot.

The parties submitted briefs containing detailed arguments with authority on the issues discussed in this letter. The resolution of these issues at the trial court level does not require any further detail than is set forth in this opinion letter, particularly when it is likely that ultimate resolution of these issues will be rendered in the appellate Courts. Defendant/respondent's Motion for Summary Judgment is allowed. Ms. Hadlock should submit the appropriate form of order on the motion and a general judgment dismissing the petition.

Sincerely,



Jesse C. Margolis
Circuit Court Judge