

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

HONORABLE ROBERT O'FARRELL, JUDGE

.....
BENJAMIN KAATZ,
IN HIS CAPACITY AS A TAXPAYER RESIDENT
OF THE CITY OF SEASIDE,
PLAINTIFF,

VS.

NO. M 65043

CITY OF SEASIDE, ET AL.,
DEFENDANTS.
.....

TRANSCRIPT OF PROCEEDINGS

COURTHOUSE, MONTEREY, CALIFORNIA

AUGUST 15, 2003

APPEARANCES:

JAY RENNEISEN
1931 SAN MIGUEL DR. #210A
WALNUT CREEK, CA 94596
HEIDI K. WHILDEN
1130 FREMONT BLVD. #105
SEASIDE, CA 93955
KENNETH B. BLEY
2049 CENTURY PARK EAST, 28TH FL
LOS ANGELES, CA 90067-3284
DENNIS MC CARTHY
SALINAS, CA 93901

ALSO PRESENT:
CLAUDIA MARTIN, DONALD FREEMAN

1 A PRELIMINARY INJUNCTION WHEN IT ADMITTED IN A SENSE THE
2 PARTIES. K&B WAS NOT A PARTY TO THE ACTION WHEN THE
3 INJUNCTION WAS ISSUED.

4 I THINK THE COMPELLING ANSWER TO THAT IS A
5 MATTER OF LAW, THAT, IN FACT, THERE WAS NOT
6 JURISDICTION. AND THE CALIFORNIA SUPREME COURT HAS A
7 CASE THAT I THINK IS EXACTLY ON POINT ON THAT ISSUE.

8 THE CASE IS -- AND I BROUGHT COPIES FOR THE
9 COURT AND COUNSEL. THE CASE IS ENTITLED AND CAPTIONED
10 AMBASSADOR PETROLEUM COMPANY V. SUPERIOR COURT. THE
11 CITATION ON THAT CASE IS 208 CAL 667. IT IS STILL GOOD
12 LAW IN CALIFORNIA.

13 AND, VERY BRIEFLY, YOUR HONOR, IN TERMS OF
14 THAT CASE, AND THE ISSUE BEFORE THE COURT WHICH IS
15 STRIKINGLY SIMILAR TO WHAT WAS BEFORE JUDGE KINGSLEY
16 BEFORE THE COURT TODAY, AT PAGE 670, THE ISSUE IS
17 DESCRIBED AS FOLLOWS, QUOTE,

18 THE ONLY POINT NOW PRESENTED FOR
19 DETERMINATION IS THE CONTENTION OF THE
20 PETITIONERS THAT THE COURT EXCEEDED ITS
21 JURISDICTION IN ASSUMING TO PROCEED WITH
22 THE HEARING ON THE ORDER TO SHOW CAUSE
23 WHY A TEMPORARY INJUNCTION SHOULD NOT
24 ISSUE WITHOUT BRINGING IN THE ALLEGED
25 INDISPENSABLE PARTIES.

26 THAT WAS THE ISSUE BEFORE THE COURT. AND THEN
27 THE COURT TOLD US WHAT THE LAW IS IN THAT CIRCUMSTANCE.
28 AND THAT IS THE NEXT PAGE AT 671, DOWN ABOUT HALFWAY

1 THERE IS A QUOTATION THAT SAYS,

2 WHETHER A COMPLETE DETERMINATION OF THE
3 CONTROVERSY CANNOT BE HAD WITHOUT THE
4 PRESENCE OF OTHER PARTIES MAY READILY
5 INVOLVE QUESTIONS OF FACT AS TO WHICH THE
6 DISCRETION OF THE COURT MIGHT BE
7 EXERCISED. BUT WHEN A TRIAL COURT FINDS,
8 OR THE RECORD INDISPUTABLY SHOWS THAT A
9 COMPLETE DETERMINATION OF THE CONTROVERSY
10 CANNOT BE HAD WITHOUT THE PRESENCE OF
11 OTHER PARTIES, SUCH PARTIES BECOME
12 NECESSARY AND INDISPENSABLE PARTIES.

13 AND THE SECTION THEY'RE TALKING ABOUT IS 389 OF THE CODE
14 OF CIVIL PROCEDURE REGARDING INDISPENSABLE PARTIES.

15 THE SECTION IS MANDATORY AND THE QUESTION
16 THEN BECOMES ONE OF JURISDICTION, IN THAT
17 THE COURT MAY NOT PROCEED WITHOUT
18 BRINGING THEM IN.

19 HERE, THE PREMISE TO THAT COURT'S RULING OBVIOUSLY IS
20 THAT YOU HAVE INDISPENSABLE PARTY. HERE, THERE IS NO
21 DISPUTE ON THAT ISSUE.

22 ON AUGUST 8, THE PLAINTIFFS MOVED TO BRING K&B
23 IN. IN THEIR MEMORANDUM OF POINTS AND AUTHORITIES, AT
24 PAGE 4, MISS WHILDEN SAID THAT, IN EFFECT, K&B IS AN
25 INDISPENSABLE PARTY. AND I QUOTE,

26 HERE, THE AMENDED PLEADING IS NECESSARY
27 AND PROPER BECAUSE K&B'S INTERESTS ARE
28 DIRECTLY IMPACTED BY THIS ACTION, WHICH

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AT ITS CORE, SEEKS TO VOID K&B'S DEEDS
AND CONTRACTS WITH THE DEFENDANT CITY OF
SEASIDE.

INDEED, UNDER SIMILAR CIRCUMSTANCES,
THE APPELLATE COURT IN A TAXPAYER ACTION
CONSIDERED AND DETERMINED THAT A PRIVATE
PARTY WHO CONTRACTED WITH THE DEFENDANT
GOVERNMENTAL ENTITY AS A PARTY TO THE
CONTRACT, WAS AN INDISPENSABLE PARTY TO
THE ACTION SINCE HIS INTEREST WOULD
INEVITABLY BE AFFECTED BY THE JUDGMENT
RENDERING THE CONTRACT VOID, OR ENJOINING
FURTHER PAYMENT THEREUNDER.

THAT IS IN PLAINTIFF'S OWN MOVING PAPERS TRYING TO ADD
K&B AS A PARTY. AND MISS WHILDEN'S DECLARATION IN
SUPPORT OF THAT POINTS AND AUTHORITIES, SAID, AT PAGE 2,
PARAGRAPH 3, LINES 1 THROUGH 5, QUOTE,

WITH RESPECT TO THE REQUEST TO ADD
K&B/BAKEWELL, AS A DEFENDANT HEREIN BY AN
AMENDED COMPLAINT, I NOTE THAT IT IS
NECESSARY BECAUSE K&B/BAKEWELL'S
INTERESTS ARE DIRECTLY IMPACTED BY THIS
ACTION, WHICH AT ITS CORE, SEEKS TO VOID
K&B/BAKEWELL'S DEED IN CONTRACT WITH THE
DEFENDANT, THE CITY OF SEASIDE. AND,
THEREFORE, IN OUR CASE, K&B CLEARLY IS AN
INDISPENSABLE PARTY.

HERE, THE MOTION FOR PRELIMINARY INJUNCTION, AND I

1 KNOW THIS COURT DID NOT SIT ON THE HEARING OF THAT
2 MOTION; THAT WAS ON AUGUST 7. K&B/BAKEWELL WAS NOT
3 ADDED AS A PARTY TO THIS ACTION UNTIL AUGUST 8, THE NEXT
4 DAY.

5 SO, THE FACTS ARE UNDISPUTED, THAT AT THE TIME
6 THE PRELIMINARY INJUNCTION WAS ISSUED, K&B WAS AN
7 INDISPENSABLE PARTY, AND IT WAS NOT BEFORE THE COURT.

8 I BELIEVE THAT THE AMBASSADOR PETROLEUM
9 COMPANY CASE, A CALIFORNIA SUPREME COURT CASE, IS
10 DISPOSITIVE: THAT UNDER THOSE CIRCUMSTANCES, THE COURT
11 LACKS JURISDICTION TO ISSUE THAT PRELIMINARY INJUNCTION.

12 AND I THINK TO JUDGE KINGSLEY'S CREDIT, WHEN
13 THE MATTER WAS HEARD, SHE HAD SOME SERIOUS CONCERNS
14 ABOUT HER PRELIMINARY INJUNCTION AND THAT ORDER
15 AFFECTING -- OR THE POTENTIAL FOR AFFECTING K&B'S
16 INTERESTS.

17 SHE SAID THAT SHE DID NOT INTEND HER ORDER TO
18 AFFECT K&B. AND, INDEED, IN THE TRANSCRIPT OF THAT
19 HEARING, JUDGE KINGSLEY, AT PAGE 100, LINES 16 TO 18 AT
20 THE HEARING ON AUGUST 7, SHE SAID, QUOTE,

21 I AM NOT SAYING ANYTHING ABOUT THE
22 DEVELOPER. I HAVE NOT MADE ANY ACTIONS
23 OR ORDERS REGARDING THE DEVELOPER.

24 AND SHE HAD SAID EARLIER IN THAT HEARING, AND THIS IS
25 PAGE 78, LINES 18 THROUGH 19, JUDGE KINGSLEY HAD SAID,
26 "THEY ARE NOT EVEN IN THE CASE YET."

27 THAT WAS IN RESPONSE TO MISS MARTIN TRYING TO
28 ARGUE K&B'S INTERESTS AND THE HARM THAT IT WOULD SUFFER

1 UNDER THIS PRELIMINARY INJUNCTION.

2 AND I THINK, CANDIDLY, YOUR HONOR, NOBODY IN
3 THAT COURTROOM THAT DAY UNDERSTOOD THAT THE LACK OF
4 K&B'S PRESENCE IN THE LAWSUIT WAS JURISDICTIONAL, EVEN
5 THOUGH THE ISSUE HAD BEEN RAISED BY MISS MARTIN AND IN
6 ARGUMENT BY MR. FREEMAN.

7 THE POINT HERE, YOUR HONOR, IS I THINK THIS
8 COURT HAS TO ADDRESS THAT JURISDICTIONAL ISSUE FIRST. I
9 THINK THE CASE OF AMBASSADOR PETROLEUM --

10 THE COURT: THEY'RE HERE NOW, THEY'RE IN THE
11 CASE NOW.

12 MR. MC CARTHY: THEY ARE, YOUR HONOR. THAT IS
13 TRUE. BUT WHAT WE ARE ADDRESSING IS A MOTION TO VACATE
14 A PRELIMINARY INJUNCTION, AND WE TO HAVE LOOK THE FACTS
15 AT THAT TIME.

16 CLEARLY, THEY'RE IN THE CASE TODAY, AND SHOULD
17 THE PLAINTIFFS WISH TO BRING ANOTHER PRELIMINARY
18 INJUNCTION, THAT, PERHAPS, WOULD BE APPROPRIATE. BUT I
19 THINK, PROCEDURALLY, IT'S INAPPROPRIATE.

20 THE COURT: WELL, LET'S GET RIGHT TO THE MORE
21 SUBSTANTIAL MERITS.

22 MR. MC CARTHY: AGAIN, YOUR HONOR --

23 THE COURT: I HEARD YOUR COMMENTS.

24 MR. MC CARTHY: I UNDERSTAND THAT. I THINK
25 IT'S DISPOSITIVE.

26 ON THE MERITS OF WHAT HAS BEEN BRIEFED, AND
27 I'M GOING TO DEFER TO MR. BLEY TO ADDRESS THOSE ISSUES.

28 MR. BLEY: GOOD MORNING, YOUR HONOR. LET ME

1 START QUICKLY BY GOING THROUGH THE CHRONOLOGY, BECAUSE
2 IT'S IMPORTANT.

3 WE GO BACK TO 1998, WHEN SEASIDE AGREED TO
4 SELL THE HAYES PARK PROPERTY -- NOW KNOWN AS THE SEASIDE
5 HIGHLANDS -- TO KB/BAKEWELL.

6 JULY 25TH OF LAST YEAR, 2002, KB/BAKEWELL
7 BOUGHT THE SEASIDE HIGHLANDS FROM THE CITY FOR 6,950,000
8 -- 850,000 MORE THAN THE CITY HAD PAID TO THE U.S. ARMY.

9 MAY 8, 2003, THE CITY AUTHORIZES THE
10 COMMENCEMENT OF CONSTRUCTION.

11 MAY 15, THIS PRESENT LAWSUIT IS FILED, THE
12 ORIGINAL COMPLAINT IS FILED. KB/BAKEWELL IS NOT NAMED
13 AS A PARTY, NOR ANY RELIEF IS SOUGHT AGAINST IT.

14 MAY 16TH, A PRELIMINARY INJUNCTION HEARING IS
15 HELD BEFORE JUDGE KINGSLEY, AND IT IS DENIED.

16 AUGUST 7, JUDGE KINGSLEY GRANTS THE
17 PRELIMINARY INJUNCTION. IT IS DIRECTED TO SEASIDE
18 ALONE. IT PROHIBITS THE CITY FROM APPROVING THE FINAL
19 SUBDIVISION MAP FOR KB/BAKEWELL. BOND IS SET AT \$1,000
20 BASED SOLELY ON THE COURT'S UNDERSTANDING THAT SEASIDE
21 WILL SUFFER NO HARM.

22 AUGUST 8, WE ARE BROUGHT IN. KB/BAKEWELL IS
23 MADE A PARTY. JUDGE KINGSLEY STATED ON THE RECORD THAT
24 SHE BELIEVED IT WAS LIKELY THAT SEASIDE HAD VIOLATED THE
25 SURPLUS LAND ACT. HER GRANT OF THE PRELIMINARY
26 INJUNCTION WAS BASED ON THAT, AND THAT LACK OF ANY HARM
27 TO SEASIDE IS DIFFERENT FROM ANY HARM THAT KB/BAKEWELL
28 MAY HAVE SUFFERED.

1 NOW, WE DON'T HAVE A COPY OF THE TRANSCRIPT OF
2 THE AUGUST 8TH HEARING. IT HAS BEEN ORDERED. I PUT IN
3 MY DECLARATION WHAT I HEARD SITTING IN THE AUDIENCE. SO
4 THAT IS MY BEST SHOT AT BEING A REPORTER.

5 THE COURT: ACTUALLY, WE DO HAVE A TRANSCRIPT.

6 MR. BLEY: OF THE 9TH -- EXCUSE ME, OF THE
7 8TH?

8 THE COURT: YES.

9 MR. BLEY: IT SHOULD BE VERY SHORT.

10 THE COURT: OH, THE 8TH.

11 MR. BLEY: OF THE 8TH.

12 MR. BLEY: WE HAVE GOT THE 7TH.

13 THE COURT: THE 7TH.

14 MR. BLEY: RIGHT. THE 8TH IS VERY SHORT,
15 BECAUSE THE PARTIES STIPULATED THAT KB/BAKEWELL COULD BE
16 BROUGHT IN. THERE WAS A LITTLE BIT OF COLLOQUY. I'LL
17 BET IT ISN'T 15 PAGES, TOTAL. BUT THAT IS WHEN JUDGE
18 KINGSLEY MADE HER STATEMENT.

19 MR. KAATZ -- OH, EXCUSE ME, THEN ON AUGUST
20 11TH, THERE WAS A TELEPHONE CONVERSATION WITH JUDGE
21 KINGSLEY, MR. RENNEISEN, MYSELF, IN WHICH WE TOLD JUDGE
22 KINGSLEY ABOUT THE PROBLEMS THAT KB/BAKEWELL AND ITS
23 BUYERS WERE HAVING, THAT --

24 THE COURT: WELL, I DON'T WANT TO
25 SHORT-CIRCUIT IT -- WELL, MAYBE A LITTLE BIT, I SUPPOSE.
26 MAYBE I SHOULD LOOK TO YOU. WHAT ABOUT THE ISSUE OF
27 REALLY DAMAGES BEING ADEQUATE HERE, AND THIS INJUNCTION
28 IS NOT APPROPRIATE. THAT SEEMS TO BE THE REAL GIST OF

1 THIS.

2 MS. WHILDEN: I BELIEVE THE ISSUE OF DAMAGES
3 IS HANDLED QUITE ELEGANTLY AND FULLY IN THE MATTERS OF
4 KEITH AND BOSIO THAT WE HAVE PRESENTED TO THE COURT IN
5 OUR OPPOSITION PAPERS.

6 CLEARLY, THE EQUITIES DO NOT AWARD ILLEGAL
7 CONDUCT, AND THAT IS EXACTLY WHAT HAPPENED HERE WITH THE
8 DEVELOPERS. THEY CAME IN, THEY INTENTIONALLY AND
9 AFFIRMATIVELY VIOLATED TWO PROVISIONS OF THE SUBDIVISION
10 MAP ACT. AND SO --

11 THE COURT: WHAT IS GOING TO BE THE ULTIMATE
12 THING YOU'RE SEEKING IN THE CASE? WHAT WOULD YOU
13 ULTIMATELY WANT OUT OF THEM FOR DOING THIS?

14 MR. RENNEISEN: IF I MAY, YOUR HONOR, I THINK
15 THAT'S THE QUESTION I'M GOING TO FIELD.

16 THIS CASE IS ABOUT GETTING A DECLARATION OF
17 THE DEED IS VOID. THAT IS WHAT IS THIS CASE IS ABOUT.
18 IT'S NOT JUST ABOUT DAMAGES.

19 YOUR HONOR, THERE IS A REPRESENTATION ABOUT
20 WHAT WAS SAID BEFORE JUDGE KINGSLEY ON THE DAY AFTER THE
21 HEARING ON THE MOTION FOR PRELIMINARY INJUNCTION ABOUT
22 THE BASIS FOR HER RULING.

23 AND I WANT TO GIVE YOUR HONOR A CHANCE TO SEE
24 THE LANGUAGE OF JUDGE KINGSLEY. SHE SAID ON THE 7TH,
25 WHEN SHE WAS GRANTING THE MOTION FOR PRELIMINARY
26 INJUNCTION -- THIS IS ON PAGE 96, AFTER SHE MADE IT VERY
27 CLEAR THAT SHE SEES A VIOLATION OF THE SURPLUS LAND ACT,
28 SHE SAID,

1 AND ALTHOUGH LESS OF A LIKELIHOOD, STILL
2 REASONABLE PROBABILITY OF PREVAILING
3 UNDER GOVERNMENT CODE SECTION 37364.
4 THAT IS THE ALTERNATE BASIS ON, ONE OF THE ALTERNATE
5 BASES ON WHICH WE'RE SEEKING RELIEF. ON THE RECORD, SHE
6 SAID --

7 THE COURT: LESS OF A PROBABILITY. AND A
8 PROBABILITY IS ONE OF THE CRITERIA FOR GRANTING.

9 MR. RENNEISEN: OF COURSE, YOUR HONOR. AND
10 THE COURT'S RESPONSIBILITY IS TO TAKE A LOOK AT: WHAT
11 IS THE PROBABILITY OF PREVAILING?

12 AND IN THIS CASE, THIS COURT, JUDGE KINGSLEY,
13 SAID, "THERE IS A PROBABILITY, AND LET ME TELL YOU WHY."
14 VERY STRONG ARGUMENT WITH SURPLUS LAND ACT; NOT AS
15 STRONG, NOT AS GREAT, NOT AS MUCH OF A SLAM-DUNK, BUT A
16 REASONABLE PROBABILITY OF SUCCESS UNDER 37364.

17 THE COURT: EVEN IF IT WAS A SUCCESS, WHAT
18 WOULD FOLLOW FROM THAT, THEN? WHAT THE CLAIM IS HERE IS
19 THIS PROPERTY WAS SOLD UNDER MARKET VALUE. THAT COULD
20 BE RECTIFIED. PRESUMABLY, IT WOULDN'T BE THAT --

21 MR. RENNEISEN: NO, YOUR HONOR. ACTUALLY, IT
22 WOULD BE A DECLARATION FROM THE COURT THAT THAT ACT BY
23 THE GOVERNMENT WAS VOID. AND, JUDGE KINGSLEY -- IF YOU
24 READ THE TRANSCRIPT -- IS VERY KEEN ON RECOGNIZING,
25 UNDER 37364, THAT THE REMEDY IS VOIDING.

26 THE COURT: THEN, ULTIMATELY, WHAT WOULD
27 HAPPEN?

28 MR. RENNEISEN: WELL, ULTIMATELY, WHAT WOULD

1 HAPPEN IS THERE WOULD BE A DECLARATION FROM THE COURT
2 SAYING THE DEED FROM THE CITY TO KB/BAKEWELL IS VOID.

3 THE COURT: WHAT WOULD HAPPEN TO THE PROPERTY
4 THEN?

5 MR. RENNEISEN: WELL, I MEAN, THERE IS
6 OBVIOUSLY -- I THINK THAT'S AN EXCELLENT QUESTION.
7 BECAUSE THAT IS REALLY THE ISSUE HERE TODAY, WHICH IS:
8 WHAT ARE WE GOING TO DO WITH THAT PROPERTY?

9 BECAUSE, AT THE END OF THE DAY, IF THAT DEED
10 IS VOIDED, WHAT IS GOING TO HAPPEN? IS THE CITY GOING
11 TO JUST TAKE IT OVER? IS THE CITY GOING TO CONTINUE
12 BUILDING?

13 RIGHT NOW, THAT PROPERTY IS BEING
14 FUNDAMENTALLY CHANGED -- FUNDAMENTALLY CHANGED. IT'S
15 BEING DEVELOPED. AT THE END OF THE DAY, THIS COURT,
16 JUDGE KINGSLEY, IS GOING TO HAVE TO DECIDE: WHAT AM I
17 GOING TO DO? IF I VOID THAT DEED, WHAT KIND OF
18 REPERCUSSIONS ARE GOING TO OCCUR?

19 THAT IS EXACTLY WHY WE NEED THE PRELIMINARY
20 INJUNCTION IN THE FIRST PLACE. BECAUSE, WHEN WE GET TO
21 THE END OF THE DAY, THE VOIDANCE OF THE DEED IS GOING TO
22 BE A RELIEF THAT WE'RE ENTITLED TO. AND THE FALL-OUT
23 FROM THAT, YOUR HONOR -- THE FALL-OUT FROM THAT IS GOING
24 TO DEPEND UPON HOW MUCH K&B CONTINUES, FROM WHAT WE PUT
25 IN OUR BRIEF, THE ILLEGAL CONDUCT IN DEVELOPING THE
26 PROPERTY.

27 THE COURT: BUT, ASSUMING ALL OF THAT,
28 REALISTICALLY, YOU HAVE BUILDING GOING ON, YOU HAVE

1 HOUSES UP, ESSENTIALLY, RIGHT?

2 MR. RENNEISEN: YES.

3 THE COURT: THERE IS GOING TO BE DEVELOPMENT.
4 THEY'RE NOT GOING TO TEAR THESE DOWN.

5 MS. WHILDEN: YOUR HONOR, IN FACT, THE COURT
6 HAS SUGGESTED THAT IT'S NOT OPPOSED TO THE TEARING DOWN
7 OF CONSTRUCTION BECAUSE PARTIES WHO FLOUT APPROPRIATE
8 JUDICIAL ACTION -- AND HERE I'M QUOTING BOSIO --

9 THE COURT: REALLY, WHY WOULD THAT HAPPEN?
10 IF, IN FACT, THE PROBLEM IS HERE, IF ONE OF THE PROBLEMS
11 HERE IS THE NON-MARKET -- CLAIMED NON-MARKET VALUE SALE
12 OF PROPERTY, THAT IS SOMETHING THAT IS RELATIVELY EASY
13 TO RECTIFY, A LOT EASIER THAN TEARING DOWN HOMES.

14 MR. RENNEISEN: YOUR HONOR, GRANTED -- THIS IS
15 WHY WE THINK IT'S SO IMPORTANT TO STOP NOW, TO STOP THE
16 PROCESS NOW. WE'RE GOING TO FACE THIS PROBLEM. IT
17 LIMITS OUR ARGUMENTS AT THE END OF THE DAY REGARDING
18 RELIEF WE'RE ENTITLED TO.

19 IF THEY HADN'T JUMPED THE GUN AND STARTED
20 DEVELOPING, THEN IT WOULD BE CLEAR: YOU JUST GET TITLE
21 -- TITLE TO THE PROPERTY WOULD BE DEEMED IN THE CITY OF
22 SEASIDE. THEY WOULD GET THE PROPERTY BACK. THEIR
23 CONSTRUCTION IS PROBLEM HERE. THEIR CONSTRUCTION IS THE
24 PROBLEM HERE.

25 THE COURT: BUT EVERY TIME AN INJUNCTION IS
26 SOUGHT, YOU HAVE TO LOOK AT, REALLY, WHAT YOU'RE DEALING
27 WITH, NOT JUST SOME THEORETICAL LEGAL PRINCIPAL. WHAT
28 ARE THE FACTS? WHAT IS THE SITUATION? HOW DOES IT

1 STAND RIGHT NOW? AND THERE IS A BALANCING OF EQUITIES
2 THAT HAS TO GO ON. AND --

3 MR. RENNEISEN: YOUR HONOR, I THINK JUDGE
4 KINGSLEY -- I THINK MISS WHILDEN IS GOING TO IDENTIFY
5 HOW THE EQUITIES ON BEHALF OF KB/BAKEWELL ARE NOT REALLY
6 THERE.

7 THE COURT: THOSE ARE MY THOUGHTS, ANYWAY. GO
8 AHEAD.

9 MS. WHILDEN: YES, YOUR HONOR. EQUITIES DO
10 NOT REWARD ILLEGAL CONDUCT. TO EXPLAIN TO THE COURT
11 WHAT HAS HAPPENED HERE, AS IN THE CASES OF KEITH AND
12 BOSIO, THE DEVELOPER SIMPLY JUMPED THE GUN -- PERHAPS
13 OUT OF GREED, PERHAPS OUT OF SOME NOBLE VALUE THAT I
14 HAVEN'T YET DETERMINED.

15 A DEVELOPER MAY NOT BEGIN CONSTRUCTION ON A
16 PARCEL UNTIL THE FINAL SUBDIVISION MAP HAS BEEN
17 APPROVED. MODEL HOMES CAN GO UP, CERTAINLY. THE
18 GRADING CAN GO ON. TEAR DOWN AND DEMOLITION, CERTAINLY,
19 THAT IS PERMITTED. BUT THE ACTUAL BEGINNING
20 CONSTRUCTION OF THE HOMES IS A FELONY VIOLATION.

21 THE SECOND FELONY -- THE SECOND VIOLATION
22 THAT THEY HAVE COMMITTED WITH RESPECT TO THE SUBDIVISION
23 MAP ACT WAS IN ENCOURAGING MEMBERS OF THE PUBLIC TO
24 ENTER INTO ESCROW AGREEMENTS WITHOUT CONDITIONING THOSE
25 CONTRACTS ON THE APPROVAL OF THE FINAL SUBDIVISION MAP,
26 WE NOW HAVE YOU A SITUATION WHERE INNOCENT THIRD-PARTIES
27 ARE BEING HARMED BY THE DEVELOPER'S CONDUCT.

28 IN THE BOSIO CASE, THE COURT CLEARLY EXPLAINED

1 THAT BECAUSE EQUITIES DO NOT REWARD ILLEGAL CONDUCT, IT
2 FOLLOWS THAT A COURT SHOULD NOT RECOGNIZE ANY DAMAGES
3 RESULTING FROM THAT ILLEGAL CONDUCT.

4 AGAIN, IN KEITH, THE COURT SAID,
5 THE FACT THAT COURTS ARE RELUCTANT IN
6 SOME CASES TO ORDER THE DESTRUCTION OF AN
7 EXPENSIVE ENCROACHING STRUCTURE --

8 AS THE COURT IS CONSIDERING HERE --

9 THIS IS AN EXCELLENT, ADDITIONAL REASON
10 FOR GRANTING A PRELIMINARY INJUNCTION
11 BEFORE NEW STRUCTURES ARE COMMENCED.

12 THE COURT GOES ON TO SAY,

13 THE INCONVENIENCE AND EXPENSE WHICH
14 DEFENDANTS MIGHT SUFFER BY THE
15 FRUSTRATION OF PURPOSE IN BEING REQUIRED
16 TO HALT CONSTRUCTION THAT THEY WERE NOT
17 LEGALLY PERMITTED TO BEGIN WITH, WAS NOT
18 AN EQUITY WHICH THE UNDERLYING TRIAL
19 COURT SHOULD HAVE WEIGHED.

20 THE COURT ALSO CONSIDERED ANY HARM
21 TO INNOCENT THIRD-PARTIES RESULTING FROM
22 THE DEFENDANT DEVELOPER'S WRONGFUL
23 CONDUCT. THERE, THE COURT SAID, IN
24 WEIGHING THE ALTERNATIVE, THE ADDITIONAL
25 COST AND INCONVENIENCE WHICH A DEFENDANT
26 HAS IMPOSED UPON ITSELF BY GOING AHEAD
27 WITH ITS PROJECT PREMATURELY, SHOULD NOT
28 BE WEIGHED AGAINST THE RIGHTS OF OTHER

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PERSONS.

THAT IS EXACTLY THE CASE THAT WE HAVE HERE, YOUR HONOR.
PERHAPS, AT THE END OF THE DAY, WHEN WE ARE SITTING DOWN
WITH OPPOSING COUNSEL AND TALKING ABOUT WHERE WE GO FROM
HERE, PERHAPS IT WILL BE TEARING DOWN STRUCTURES THAT
HAVE BEGUN; PERHAPS IT WILL BE PLACING AFFORDABLE
HOUSING ON THAT PROJECT; PERHAPS WE'LL THINK OUTSIDE THE
BOX AND COME UP WITH SOMETHING NEW THAT WE HAVE NOT YET
CONSIDERED.

BUT THAT IS DOWN THE ROAD, YOUR HONOR. WHAT
WE'RE SAYING RIGHT NOW IS IT IS CRITICAL THAT THIS COURT
KEEP THE INJUNCTION IN PLACE, BECAUSE BY LIFTING THE
INJUNCTION IT GIVES DEFENDANTS AN OPPORTUNITY TO GO
FORWARD, JUMP THE GUN, AND BENEFIT FROM THEIR ILLEGAL
CONDUCT.

AND, NOT ONLY THAT, HAYES PARK WILL NOW BECOME
380 SUBDIVIDED LOTS. AND, AS WE EXPLAINED IN OUR MOVING
PAPERS, YOUR HONOR, THAT WILL PRESENT A SITUATION WHERE
THE COURT WILL LIKELY BE REQUIRED TO ADD THOSE INNOCENT
THIRD-PARTIES TO THIS LITIGATION.

CIVIL CODE SECTION 389,
WHERE A PERSON WHOSE JOINDER WILL NOT
DEPRIVE THE COURT OF JURISDICTION OVER
THE SUBJECT MATTER, THE ACTION SHALL BE
JOINED IN A PARTY. THE COURT SHALL ORDER
THE HE BE MADE A PARTY.
ONCE ESCROW IS CLOSEED IN THE CASE, YOUR HONOR, THEN WE
HAVE INDIVIDUALS, APART FROM JUST THIS DEVELOPER, WHO

1 HOLD ACTUAL PROPERTY RIGHTS TO THAT LAND. THEY WILL
2 NECESSARILY BECOME PARTY-DEFENDANTS IN THIS ACTION.

3 AND IT IS QUITE LIKELY, AND PROBABLE, THAT
4 THEN WE'RE GOING TO SEE CROSS-COMPLAINTS BETWEEN THE
5 HOMEOWNERS AND K&B/BAKEWELL, WHICH IS GOING TO TAKE US A
6 LOT FURTHER DOWN THE ROAD THAN WE ARE IF WE KEEP THE
7 INJUNCTION IN PLACE AND HAVE AN EARLY TRIAL DATE.

8 WE SUGGEST THAT TRIAL BE HAD IN THIS MATTER AS
9 EARLY AS DECEMBER. AND, IN FACT, THE POSSIBILITY OF AN
10 EARLY TRIAL DATE WAS SOMETHING THAT THE COURT CONSIDERED
11 IN THE KEITH CASE. THERE, THE COURT SAID,

12 IN DETERMINING THE FORM OF ANY
13 PRELIMINARY INJUNCTION WHICH MAY BE
14 ISSUED, AND THE AMOUNT OF THE UNDERTAKING
15 TO BE REQUIRED --

16 THERE THEY WERE ASKING FOR AND CONSIDERING A LOW
17 REASONABLE BOND.

18 THE SUPERIOR COURT SHOULD ALSO CONSIDER
19 THE FEASIBILITY OF AN IMMEDIATE TRIAL ON
20 THE MERITS. THE TRIAL COURT MAY
21 CONDITION A PRELIMINARY INJUNCTION UPON
22 PLAINTIFFS BEING READY FOR TRIAL WITHIN A
23 REASONABLE TIME FIXED BY THE COURT.

24 HERE WE HAVE A CASE MANAGEMENT CONFERENCE THAT IS NOW
25 SCHEDULED FOR, I BELIEVE, SEPTEMBER 13. AND, PERHAPS,
26 WE COULD ADVANCE THAT DATE.

27 DEFENDANTS HAVE CLAIMED THAT THEY WILL BE
28 READY WITHIN EIGHT OR NINE MONTHS FOR TRIAL. WE SUGGEST

1 THAT PERHAPS WE LIMIT DISCOVERY IN THIS ACTION. THE
2 FACTS ARE NOT GOING TO CHANGE; THE LAW IS NOT GOING TO
3 CHANGE.

4 WE CAN HAVE THIS MATTER COMPLETED BY THE END
5 OF THE YEAR. THAT WOULD NECESSARILY LIMIT THE DAMAGES
6 THAT ALTHOUGH DEFENDANTS HAVE CREATED THOSE, AND THEY
7 MUST SHOULDER THOSE EXPENSES NOW -- THEY MAY NOT BE
8 FACTORED INTO THE EQUITY HERE BECAUSE OF THEIR WRONGFUL
9 CONDUCT -- IT WOULD LIMIT THEIR DAMAGES AND ANY
10 POTENTIAL DAMAGES TO THE INNOCENT HOMEOWNERS --
11 POTENTIAL HOMEOWNERS

12 THE COURT: ALL RIGHT.

13 MR. BLEY: YOUR HONOR, MAY I RESPOND TO THAT?

14 THE COURT: DID YOU COMPLETE BASICALLY? WE
15 CAN'T GO ON ALL DAY.

16 MR. RENNEISEN: I KNOW, YOUR HONOR, AND I
17 APPRECIATE YOU'RE LOOKING AT THE BIG PICTURE HERE. AND
18 I THINK ONE THING WE NEED TO MAKE VERY CLEAR HERE IS
19 THAT 37364 IS THE BASIS BY WHICH WE HAVE A CLAIM TO VOID
20 THE DEED, AND JUDGE KINGSLEY AGREED WITH THAT.

21 THE CONSTRUCTION, THE DEVELOPMENT OF THE
22 PROPERTY, IF IT CONTINUES, WILL OPERATE TO FURTHER
23 DEPRIVE US OF THAT RIGHT TO VOID THE DEED. IT JUST
24 FURTHER EXACERBATES THE PROBLEM -- EXACERBATES THE
25 PROBLEM.

26 IN TERMS OF WHAT THE ORDER WAS, KEEP IN MIND
27 WE ASKED FOR TWO THINGS: WE ASKED FOR JUDGE KINGSLEY TO
28 PROHIBIT ANY FURTHER BUILDING PERMITS; AND WE ASKED FOR

1 HER TO PROHIBIT ANY APPROVAL OF SUBDIVISION MAPS.

2 SHE DIDN'T DO THE FIRST THING; SHE DIDN'T SAY,
3 "I'M GOING TO ORDER THEM NOT TO APPROVE BUILDING
4 PERMITS."

5 BUT SHE DID SAY, "I'M GOING TO ORDER THEM NOT
6 TO APPROVE SUBDIVISION MAPS," WHICH MEANS THE PROPERTY
7 CAN'T BE SUBDIVIDED AND SOLD OFF.

8 THAT'S THE REAL ISSUE HERE. AND JUDGE
9 KINGSLEY WAS ACUTELY AWARE OF, IN THE BIG PICTURE, OF
10 CCP 389: EVERY TIME THESE NEW HOMEOWNERS ARE BROUGHT IN
11 -- THIS IS JUDGE KINGSLEY'S LANGUAGE AT PAGE 98 --

12 THERE IS HARM TO THE PLAINTIFF IN NOT
13 GETTING AN INJUNCTION AT THIS TIME
14 BECAUSE THEY'RE GOING TO HAVE A PROBLEM
15 OF ADDING MULTIPLE DEFENDANTS IF THE
16 SUBDIVISION MAP IS RECORDED AND THE LOTS
17 ARE CONVEYED AND IT GOES FORWARD.

18 SHE SAW THAT AS AN IMPORTANT ISSUE. ADDITIONALLY, SHE
19 SAID,

20 IT'S GOING TO FURTHER COMPLICATE -- BE
21 COMPLICATED, AS DEVELOPMENT PROCEEDS.
22 FURTHER COMPLICATIONS AS DEVELOPMENT
23 PROCEEDS, IN TERMS OF THE TAXPAYER BEING
24 ABLE TO ASSERT HIS RIGHTS ON BEHALF OF
25 THE TAXPAYERS AND CITIZENS AND RESIDENTS
26 OF THE CITY OF SEASIDE IN DETERMINING
27 WHETHER THE CITY ACTED LAWFULLY.

28 I THINK YOUR QUESTION ABOUT WHAT IS GOING TO HAPPEN AT

1 THE END OF THE DAY, IS SOMETHING THAT JUDGE KINGSLEY
2 TOOK INTO CONSIDERATION WHEN SHE ORDERED THAT WE'RE JUST
3 GOING TO SAY, YOU CANNOT LEGALLY DIVIDE THE PROPERTY --
4 YOU CAN CANNOT LEGALLY DIVIDE THE PROPERTY. WE'RE GOING
5 TO PRESERVE THE STATUS QUO.

6 SHE DIDN'T ISSUE THE ORDER WITH RESPECT TO
7 BUILDING PERMITS. WHAT THIS MEANS, IN EFFECT, YOUR
8 HONOR, IS THAT THEY CAN'T SELL THE PROPERTY. YOU KNOW,
9 THEY HAVE ALREADY EXHIBITED THEIR INTENTION TO BUILD IN
10 VIOLATION OF THE SUBDIVISION MAP ACT. BUT THEY CAN'T
11 SELL THE PROPERTY.

12 THIS CASE SHOULD BE TRIED VERY QUICKLY. THE
13 STATUS QUO IN THIS CASE, TO THE EXTENT THAT WE HAVE AN
14 OPPORTUNITY TO VOID THE DEED, IS TO PRESERVE THE LEGAL
15 ONENESS OF THOSE 105 PARCELS. WE WANT TO VOID THAT
16 DEED. TO THE EXTENT THAT THEY'RE GOING TO SAY IT CAN BE
17 PARSED UP INTO 360, THAT IS GOING TO CREATE A TREMENDOUS
18 PROBLEM IN THIS LAWSUIT -- A TREMENDOUS PROBLEM.

19 MR. BLEY: A COUPLE OF POINTS, YOUR HONOR.
20 FIRST OF ALL, IT IS SIMPLY NOT TRUE THAT THE BUYERS WERE
21 NOT GIVEN NOTICE. WITHIN DAYS OF THE FILING OF THE
22 LAWSUIT, A NOTICE WAS GIVEN OF PENDING LITIGATION. MAY
23 I GIVE THAT TO YOUR HONOR?

24 THE COURT: I'LL ACCEPT YOUR REPRESENTATION.

25 MR. BLEY: AND EACH OF THE SIX DECLARANTS
26 SIGNED IT.

27 NEXT, JUDGE KINGSLEY RECOGNIZED RIGHT AT THE
28 BEGINNING, THAT THERE WAS AN ISSUE AS TO THE HARM. SHE

1 STATED ON PAGE 7, AND WE'RE NOW AT THE AUGUST 7,
2 AS TO HARM, I CAN SEE ARGUMENTS OF HARM
3 ON BOTH SIDES. IT'S KIND OF A BALANCING
4 THERE. AND SO DEFINITELY ON THAT, I
5 ENCOURAGE MORE ARGUMENT BY EACH PARTY.
6 I DON'T KNOW HOW IT BALANCES OUT YET. I
7 WAS WAITING TO HEAR ARGUMENTS.
8 ON PAGE 63, LINES 13 THROUGH 17, MR. RENNEISEN
9 REPRESENTED TO THE COURT,
10 THE ONLY BUILDINGS, AS I UNDERSTAND IT,
11 THAT ARE UP, ARE THE MODEL BUILDINGS AND
12 SOME OTHER GENERAL BUILDINGS. BUT THE
13 ACTUAL HOMES HAVEN'T EVEN BEEN BEGUN
14 CONSTRUCTION. FOR SURE, AREN'T DONE.
15 THIS IS LAST THURSDAY. ON PAGE 76, MISS WHILDEN
16 REPRESENTED TO JUDGE KINGSLEY, LINES 10-17,
17 THEY HAVE NOT SOLD THE HOMES. NOT ONE
18 HOME HAS BEEN SOLD YET. OBVIOUSLY,
19 BECAUSE THE MAP IS NOT FINAL. THE MAP
20 HAS NOT BEEN APPROVED. SO THERE IS STILL
21 THE OPPORTUNITY FOR THE PLAINTIFF, SHOULD
22 IT GET TO THAT POINT, TO COLLECT MONIES
23 FROM THE PROFITS THAT WOULD LIKELY OCCUR
24 FROM THE SALE OF THESE PROPERTIES, WHICH
25 HAVEN'T EVEN BEEN BUILT YET.
26 THAT RESULTED IN A LONG COLLOQUY BEGINNING AT PAGE 100,
27 LINE 10, THROUGH PAGE 102, LINE 10, WHICH I WON'T READ
28 ENTIRELY. BUT I WILL TELL YOU WHAT THIS WAS ALL ABOUT.

1 MISS MARTIN, ON BEHALF OF THE CITY, COMPLAINED
2 THAT THE \$1,000 BOND IS FAR TOO LOW UNDER THE
3 CIRCUMSTANCES. THE COLLOQUY ENDS UP WITH JUDGE KINGSLEY
4 STATING, THIS IS ON PAGE 102, LINES 2 THROUGH 10,
5 SO, IN ESSENCE, I THINK WE'LL LET THAT
6 DEVELOPER COME IN AND MAKE ARGUMENTS ON
7 THEIR BEHALF ONCE, IF THEY ARE DETERMINED
8 TO BE IN THE CASE.

9 IT'S EITHER THE DEVELOPER COULD HAVE
10 BEEN HERE IF THE EX PARTE MOTION HAD BEEN
11 ALLOWED TO GO FORWARD, AND ARGUED THEY
12 HAD BEEN BROUGHT IN AT THAT TIME.

13 I MEAN, I THINK THAT IT'S INAPPROPRIATE
14 FOR YOU --

15 THIS IS THE CITY OF SEASIDE --

16 TO ARGUE ON BEHALF OF THE DEVELOPER AT
17 THIS POINT.

18 SO, THE EQUITIES WERE NEVER WEIGHED WITH RESPECT TO
19 KB/BAKEWELL, WITH RESPECT TO ITS BUYERS, WITH RESPECT TO
20 ITS SUBCONTRACTORS, WITH RESPECT TO THE SUBCONTRACTORS'
21 EMPLOYEES.

22 THAT IS ALL BEFORE YOU. I WON'T REPEAT IT.
23 WHAT I WILL SAY IS THAT NEITHER THE KEITH NOR THE BOSIO
24 CASE IS ON POINT. KEITH INVOLVED AN ATTEMPT BY A
25 SUBDIVIDER TO PLOW OVER AN EXISTING RECORDED EASEMENT
26 BELONGING TO ANOTHER LANDOWNER. AND THE COURT SAID, NO
27 WAY.

28 BOSIO INVOLVED AN ATTEMPT BY CALTRANS TO --

1 ACTUALLY HAD LET A CONTRACT, TO START DOING SOME
2 ENVIRONMENTALLY DETRIMENTAL WORK. AND THE COURT SAID,
3 WE'RE GOING TO PUT A HOLD ON THAT; WE'RE NOT GOING TO
4 LET YOU GET STARTED.

5 THAT IS NOT OUR SITUATION. OUR SITUATION IS,
6 AS THE COURT KNOWS, AND AS EXHIBIT A TO MR. FREED'S
7 DECLARATION DEMONSTRATES, WE HAVE 50 HOMES UNDER VARYING
8 STAGES OF CONSTRUCTION. SOME OF THOSE ARE GOING TO
9 CLOSE WITHIN THE NEXT SIX WEEKS. MOST ALL OF THEM WILL
10 CLOSE BY THE END OF NOVEMBER. THE SALES WERE
11 CONDITIONED ON THE RECORDATION OF THE FINAL MAP.

12 MISS WHILDEN SAID THAT THE COURT SHOULD NOT
13 LOOK AT THE COSTS WHICH KB/BAKEWELL HAS ENTERTAINED.
14 REMEMBER, YOUR HONOR, 30 MILLION OF THE 44 MILLION
15 DOLLARS WAS INVESTED BY KB/BAKEWELL BEFORE -- AFTER THE
16 -- EXCUSE ME, PRIOR TO THE FILING OF THIS LAWSUIT.

17 THEY TORE DOWN THE EXISTING HOUSING; THEY HAD
18 TO REMEDIATE LEAD-BASED PAINT; THEY TO THE REMOVE
19 ASBESTOS; THEY HAD TO GRADE; THEY HAD TO DO OFF-SITES;
20 THEY DO ON-SITES; THEY TO PROCESS. NONE OF THAT IS
21 ANYTHING THAT CAN EVEN BE ARGUED TO BE A VIOLATION OF
22 THE SUBDIVISION MAP ACT. THOSE WERE NOT ACTIONS WHICH
23 WERE TAKEN IN VIOLATION OF ANY LAW WHATSOEVER.

24 NOW, THAT COMES IN, AS FAR AS I AM CONCERNED,
25 PRIMARILY WITH RESPECT TO THE AMOUNT OF THE BOND IF THE
26 COURT DOES NOT SEE FIT TO VACATE. BUT THE BALANCING OF
27 THE HARDSHIPS, THE BALANCING OF THE HARM TO THE BUYERS,
28 TO THE SUBCONTRACTORS, TO THEIR EMPLOYEES MUST BE

1 CONSIDERED BY THIS COURT BECAUSE YOU'RE THE FIRST ONE TO
2 HEAR IT.

3 NOW, THE LAST THING I WOULD LIKE TO SAY IS
4 WITH RESPECT TO THE QUESTION WHICH YOU SHUT ME DOWN WITH
5 A FEW MINUTES AGO, AND THAT WAS ADDRESSED TO MR. KAATZ'S
6 ATTORNEY'S, ISN'T THE LEGAL REMEDY OF DAMAGES ADEQUATE?

7 AND THE ANSWER IS YES, IT'S ADEQUATE FOR
8 SEVERAL REASONS. I'M NOT GOING TO ARGUE THE MERITS.
9 IT'S NOT FAIR TO THE COURT BECAUSE I HOPE YOU DIDN'T
10 HAVE TO GO THROUGH ALL OF THE BACKGROUND.

11 THE ONE THING I WILL SAY IS THAT SECTION 37364
12 OF THE GOVERNMENT CODE DOES NOT PROHIBIT THE SALE OF
13 PROPERTY BY A CITY AT BELOW COST UNLESS IT'S FOR
14 LOW-INCOME HOUSING. IT IS PHRASED THE OTHER WAY.

15 NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY,
16 A CITY IS FREE, IF IT WISHES -- IT MAY; NOT IT SHALL --
17 IF IT WISHES TO SELL LAND FOR LOW-COST HOUSING, THE
18 COURT HAS NEVER BEEN CITED TO ANY LAW WHICH SAYS THE
19 CITY CANNOT, IF IT DETERMINES THE PUBLIC HEALTH SAFETY
20 AND GENERAL WELFARE WILL BE FURTHERED, SAYS IT CANNOT
21 SELL LAND --- IN THIS CASE THE SEASIDE HIGHLANDS -- FOR
22 LESS THAN THE FAIR MARKET VALUE.

23 AND, BY THE WAY, WE HAVE NEVER TAKEN THE
24 POSITION, CERTAINLY THE CITY HAS NEVER TAKEN THE
25 POSITION, THAT IT WAS SOLD FOR LESS THAN FAIR MARKET
26 VALUE. BUT THAT IS ANOTHER QUESTION ENTIRELY, WHICH
27 WILL HAVE TO BE ADDRESSED.

28 SO, THE LEGAL REMEDY IS ADEQUATE. WHY?

1 BECAUSE THE HARMS HERE ARE NOT SUCH AS TO BRING IN A
2 BUNCH OF PEOPLE. AND, ALSO, BECAUSE MR. KAATZ HAS
3 STATED REPEATEDLY THAT HE BELIEVES MONEY IS AVAILABLE.

4 IF YOUR HONOR WOULD LOOK AT PAGE 27, LINES 5
5 THOUGH 15 OF MR. KAATZ'S MOVING PAPERS ON THE
6 PRELIMINARY INJUNCTION, HE STATED,

7 IF THE TRUE PERSONS AND CORPORATIONS
8 BENEFITTING FROM THE DEVELOPMENT OF HAYES
9 PARK, WHICH IS LIKELY TO GROSS OVER 250
10 MILLION DOLLARS, INCLUDING THE
11 \$115,000,000 WINDFALL FROM THE GIFT OF
12 THE CITY'S PUBLIC PROPERTY, ACCEPTED FULL
13 LEGAL RESPONSIBILITY FOR THE ACTIONS OF
14 THEIR SUBSIDIARY LLC'S AND GUARANTEED
15 THAT THEY COULD AND WOULD SATISFY ANY
16 ADVERSE JUDGMENT AGAINST THEM, THERE
17 WOULD BE LESS OF A NEED FOR A PRELIMINARY
18 INJUNCTION.

19 IF THE LLC DEMONSTRATED ITS ABILITY
20 AND COMMITMENT TO PAY SUMS RESULTING FROM
21 AN ORDER OF DISGORGEMENT BY THE COURT,
22 KB/BAKEWELL COULD THEN CONTINUE BUILDING
23 HOMES, PENDING TRIAL IN THIS ACTION. ANY
24 CONCERN BY THE COURT REGARDING POSSIBLE
25 DISRUPTION TO NEW HOMEOWNERS IN
26 CONFIRMING THE CITY'S OWNERSHIP OF THE
27 PROPERTY WOULD THUS BE DISSIPATED.

28 AFTER FINDING FOR THE PLAINTIFF, THE

1 COURT COULD THEN ORDER THE TRUE PERSONS
2 AND IDENTITIES WHO PROFITED FROM THEIR
3 WRONGFUL ACTIONS TO DISGORGE THE
4 DIFFERENCE BETWEEN WHAT WAS PAID FOR THE
5 PROPERTY -- 5.95 MILLION DOLLARS -- AND
6 ITS FAIR MARKET VALUE, 115 MILLION
7 DOLLARS.

8 THAT KIND OF OFFER, THAT IS, IF THERE IS ENOUGH SECURITY
9 PROVIDED, IS REPEATED IN THE OPPOSITION TO THIS MOTION.
10 THAT IS PAGE 14, LINE 9, TO PAGE 15, LINE 7.

11 WE HAVE PROVIDED YOU WITH A DECLARATION OF ART
12 PACHINO (PHONETIC) SENIOR VICE-PRESIDENT, GENERAL
13 COUNSEL OF KB HOMES, THE PARENT COMPANY OF ONE OF THE
14 MEMBERS OF KB/BAKEWELL. KB HOMES, A FORTUNE 500
15 COMPANY, FIVE BILLION DOLLARS --

16 THE COURT: I GOT ALL OF THAT.

17 MR. BLEY: OKAY.

18 THE COURT: AND THERE IS MORE IS IN THEIR
19 REQUESTED SECURITY HERE.

20 MR. BLEY: OH, YES.

21 BUT THE POINT IS, NOW THAT -- WHAT I READ YOU
22 FIRST, WAS BEFORE KB HOMES STEPPED UP TO THE PLATE. NOW
23 THAT KB HOMES STEPPED UP TO THE PLATE, THEY SAID, NO,
24 NO, NO, WE WANT MUCH MORE. MONEY IS NOT ENOUGH.

25 THE POINT IS THAT KB HOMES WILL GUARANTY, IN A
26 FORM SUITABLE TO THE COURT THROUGH APPROPRIATE CORPORATE
27 RESOLUTION, CORPORATE GUARANTY THAT THE MONEY IS THERE.

28 THE COURT: ALL RIGHT. WHAT I'M GOING TO DO

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MS. WHILDEN: YES, YOUR HONOR, IF I MIGHT HAVE ONE MORE MINUTE.

THE COURT: ONE MINUTE.

MS. WHILDEN: OKAY. THANK YOU. VERY BRIEFLY, CERTAINLY IF WE MISSPOKE CONCERNING THE CONSTRUCTION OF THE 50 HOMES, CERTAINLY, THE DEFENDANT HAS ADMITTED NOW THAT THEY HAVE VIOLATED THE SUBDIVISION MAP ACT, THAT 50 HOMES ARE NOW UNDER CONSTRUCTION.

THE ARGUMENT THAT K&B HAS SOMEHOW BEEN DEPRIVED OF A FULL HEARING, WHEN K&B HAS BEEN PHYSICALLY SITTING IN THE COURTHOUSE FOR OUR HEARINGS, WAS PHYSICALLY HERE, SITTING BACK IN THE SHADOWS OF THE COURTROOM FOR OUR HEARINGS IN FRONT OF JUDGE KINGSLEY, WHERE ALL OF THE MATTERS WERE BRIEFED FOR SEVERAL HOURS, WE HAD VOLUMINOUS STACKS OF DOCUMENTS AND DECLARATIONS BEFORE THE COURT AT THAT POINT, IT SEEMS ABSOLUTELY SPECIOUS TO ME, YOUR HONOR.

THEN, DEFENDANT STATES THAT HE HOPES THIS COURT HASN'T HAD TO REVIEW ALL THE DOCUMENTS, BUT BRINGS UP MATTERS THAT HAVE BEEN FULLY AND FAIRLY LITIGATED IN THIS MATTER.

I WOULD ALSO POINT OUT TO THE COURT THAT THE DISGORGEMENT THAT THE PLAINTIFF HAS REQUESTED IS A POSSIBLE EQUITABLE REMEDY AVAILABLE TO THE PLAINTIFF UNDER THE SURPLUS LAND ACT WHICH JUDGE KINGSLEY FOUND THAT WE HAVE A LIKELIHOOD OF PREVAILING ON AT TRIAL.

MONEY DAMAGES ARE NOT ENOUGH. THIS IS A CASE

1 IN EQUITY. AND AS EQUITY DOES NOT REWARD A DEFENDANT'S
2 ILLEGAL CONDUCT, I WOULD JUST POINT OUT TO THE COURT
3 THAT, AGAIN, DAMAGES SHOULD NOT FLOW FROM THE
4 DEFENDANT'S ILLEGAL CONDUCT IN THIS CASE.

5 WOULD THE COURT CARE TO HEAR ARGUMENT AS TO
6 THE AMOUNT OF THE BOND?

7 THE COURT: NO.

8 MS. WHILDEN: THANK YOU.

9 MR. RENNEISEN: YOUR HONOR, IF I MAY, REALLY
10 QUICKLY, DO YOU WANT TO HEAR ANY ARGUMENT ABOUT THE
11 JURISDICTIONAL ALLEGATION, BECAUSE THERE IS CASE LAW
12 DIRECTLY ON POINT.

13 THE COURT: NO.

14 MR. RENNEISEN: JUST, LASTLY, IF YOU'RE AT ALL
15 INCLINED TO VACATE THE PRELIMINARY INJUNCTION, WE THINK
16 IT SHOULD BE VERY LIMITED.

17 WE'RE ABOUT THE SOLUTION HERE. PLAINTIFF
18 WANTS A SOLUTION HERE. WE DON'T WANT TO CAUSE PROBLEMS
19 FOR PEOPLE. WE HAVE A LOT OF SYMPATHY FOR THE 86
20 HOMEOWNERS THAT WERE PUT IN THE POSITION THAT THEY'RE
21 IN.

22 TO THE EXTENT THAT THIS COURT THINKS THAT THE
23 PRELIMINARY INJUNCTION SHOULD BE LIFTED, LIFT IT ONLY
24 WITH RESPECT TO THOSE 86 HOMEOWNERS.

25 I UNDERSTAND FROM THE MOVING PAPERS, THERE IS
26 A NUMBER OF PHASES THAT THE SUBDIVISION IS GOING TO BE
27 APPROVED. AND THIS IS PHASE ONE. A POSSIBLE SOLUTION,
28 AT LEAST FOR THOSE 86, WHO REALLY SEEM TO BE THE REAL

1 ONES WHOSE EQUITY IS MAYBE IN FAVOR OF, WOULD BE TO
2 ALLOW THOSE HOMES TO BE SUBDIVIDED, PARCELED OFF, BUT
3 NOT THE REST OF THE DEVELOPMENT, YOUR HONOR. NOT TO
4 SELL OFF THE REST IT.

5 THE COURT: ALL RIGHT. YOU HAVE COME UP WITH
6 A FALL-BACK POSITION. DO YOU WANT TO QUICKLY RESPOND TO
7 THAT?

8 MR. BLEY: WELL, I DON'T QUITE KNOW HOW TO
9 RESPOND TO IT. WE HAVE A FINAL MAP. WE HAVE GOT TO GET
10 IT APPROVED. WE CAN'T SELL THE HOMES -- WE CAN'T CLOSE;
11 WE HAVE SOLD THEM, SUBJECT TO THE RECORDATION.

12 THIS IS FOR A TOTAL OF 210 HOMES, ON THIS ONE.
13 IF WE GET THIS RECORDED, PERHAPS -- AND I CAN'T
14 GUARANTEE IT, BECAUSE I DON'T KNOW WHAT THE BURN RATE IS
15 GOING TO BE -- PERHAPS WITH AN EARLY TRIAL DATE, IT WILL
16 ALL GO AWAY.

17 WE FEEL VERY STRONGLY THAT THE CITY AND
18 KB/BAKEWELL IS GOING TO PREVAIL ON THE MERITS. I DIDN'T
19 ARGUE THE MERITS HERE, BUT WE FEET VERY STRONGLY ON
20 THAT.

21 THE COURT: ALL RIGHT. WELL, THERE IS NO
22 REASON, REGARDLESS OF WHAT KIND OF INJUNCTION EITHER
23 EXISTS OR DOESN'T EXIST, THAT THE TRIAL CANNOT GO
24 FORWARD FAIRLY QUICKLY.

25 BUT, WHEN I LOOK AT THE SITUATION AS IT NOW
26 STANDS, I DO FEEL THAT GRANTING THE INJUNCTION OR
27 CONTINUING THE INJUNCTION WOULD CREATE GREATER HARDSHIPS
28 THAN THOSE ADVANTAGES THAT MIGHT BE REALIZED BY ALLOWING

1 THE INJUNCTION TO STAND.

2 SO I WILL DISSOLVE IT, ON CONDITION, OF
3 COURSE, THAT KB HOMES EXECUTES AN ENFORCEABLE GUARANTY
4 OF ANY ULTIMATE DAMAGES THAT COULD FLOW FROM THIS CASE.

5 MR. BLEY: WE WILL PROVIDE THAT, YOUR HONOR.

6 THE COURT: ANY CHALLENGE TO THE ADEQUACY,
7 BRING IT TO COURT.

8 MR. RENNEISEN: YOUR HONOR, IF I MAY ADDRESS
9 THAT ISSUE OF THE GUARANTY, WE ALL KNOW WHAT IS
10 HAPPENING WITH THE HOUSING MARKET RIGHT NOW. KB HOMES,
11 WE'RE GLAD THEY'RE COMING TO THE PLATE, THERE IS NO
12 GUARANTY THEY'RE GOING TO BE HERE.

13 TO THE EXTENT THAT THEY'RE GOING TO SELL OFF
14 ALL OF THESE PROPERTIES, ONE OF THE THINGS WE HAVE
15 SUGGESTED IN OUR PAPERS IS THAT AT LEAST HALF IT BE PUT
16 INTO AN ACCOUNT THAT COULD GO TO PAY OFF ANY JUDGMENT IN
17 THE CASE.

18 THAT-- AND JUDGE KINGSLEY WAS AWARE OF THAT
19 ISSUE, AS WELL. TO AT LEAST MAKE SURE THAT ALL OF THE
20 VALUE THAT WE'RE CLAIMING WAS TAKEN FROM THE CITY
21 DOESN'T DISAPPEAR THROUGH WHATEVER MECHANISM THAT MIGHT
22 BE OUT THERE, AT LEAST HALF OF --

23 THE COURT: IS THERE ANY REALISTIC LIKELIHOOD
24 OF THAT HAPPENING?

25 MR. RENNEISEN: LOOKING AT THE HOUSING MARKET
26 AT THIS TIME, I DON'T KNOW. I DON'T KNOW.

27 MR. BLEY: I CAN ADDRESS THAT, YOUR HONOR. WE
28 HAVE BROUGHT ALONG ITS LATEST ANNUAL REPORT. AND I'M

1 HAPPY TO SAY THAT ITS REVENUES WENT FROM TWO AND A HALF
2 BILLION DOLLARS IN 1998, TO FIVE BILLION IN 2002. ITS
3 PROFITS WENT FROM 95 MILLION IN --

4 THE COURT: LET ME DO THIS: I WON'T REQUIRE
5 THAT AT THIS TIME. IF YOU WANT TO CHALLENGE THE
6 SUFFICIENCY OF THE GUARANTY THAT'S ULTIMATELY EXECUTED,
7 I WOULDN'T FORECLOSE RENEWING THAT ISSUE, IF THERE IS
8 SOME VIABLE CONCERN. AND THAT COULD COME BACK ANY TIME
9 BEFORE THE COURT.

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STATE OF CALIFORNIA ::
 ::: SS
COUNTY OF MONTEREY ::

I, AMANDA BERKELEY, A CERTIFIED
COURT REPORTER OF THE STATE OF
CALIFORNIA, DO HEREBY CERTIFY
THAT I AM THE REPORTER WHO
REPORTED THE ABOVE PROCEEDINGS
IN THE MATTER ENTITLED:

 KAATZ, PLAINTIFF,
 V.
 CITY OF SEASIDE, DEFENDANT;

THAT I REPORTED THE PROCEEDINGS
FULLY AND CORRECTLY, AND THAT THE
FOREGOING PAGES, NUMBERED 1 - 30,
INCLUSIVE, ARE A COMPLETE AND
CORRECT TRANSCRIPTION OF MY
STENOTYPE NOTES TAKEN AT SAID
TIME AND PLACE.

DATED: AUGUST 17, 2003

AMANDA BERKELEY, CSR 5613
OFFICIAL REPORTER