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AUG 14 2006
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE LEAGUE OF RESIDENTIAL
NEIGHBORHOOD ADVOCATES et al.,

Plaintiffs,

vs.

THE CITY OF LOS ANGELES, et al.,

Defendants.

CV 03-4890 CAS (Ex)

**RECONSIDERATION OF ORDER
DATED JULY 13, 2004, PURSUANT
TO LIMITED REMAND BY THE
COURT OF APPEALS FOR THE
NINTH CIRCUIT**

I. INTRODUCTION

This action arises out of the settlement of a prior related case, Congregation Etz Chaim v. City of Los Angeles, Case No. CV 97-5042 (HJH) (hereinafter "the prior action"). In the prior action, Congregation Etz Chaim alleged that the denial of its application for a conditional use permit ("CUP") in 1997 by the City of Los Angeles violated federal and state law. Congregation Etz Chaim sought the CUP in order to conduct religious services at 303 South Highland Avenue ("the Highland property"), which is located in the Hancock Park neighborhood, an area that is zoned R-1 (primarily residential), pursuant to Los Angeles Municipal Code § 12.08.

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1 In June 1998, while the prior action was pending, Congregation Etz Chaim filed
2 an action in the Los Angeles Superior Court for a writ of mandate, seeking to overturn
3 the City's denial of the CUP (hereinafter "the Superior Court action"). See
4 Congregation Etz Chaim v. City of Los Angeles, Los Angeles Superior Court Case No.
5 BC192517. SAC ¶ 14. The Superior Court upheld the City's denial of the CUP. Id.

6 Following the enactment of the Religious Land Use and Institutionalized Persons
7 Act of 2000 ("RLUIPA") 42 U.S.C. § 2000, Congregation Etz Chaim filed a Second
8 Amended Complaint in the prior action, alleging that, in addition to its other claims for
9 relief, the City's actions violated RLUIPA. In an order dated November 27, 2000, the
10 Court concluded that "[a]ll of the issues raised by [Congregation Etz Chaim] in its
11 original complaint have been decided against it in [parallel] state court proceedings ...
12 [and] the doctrine of issue preclusion prevents their relitigation in this court."

13 However, the Court denied the City's motion for summary judgment as to the RLUIPA
14 claims on the ground that "the state proceedings did not determine all of the issues
15 relevant under [RLUIPA]; thus there are triable issues of fact [remaining]."

16 On September 27, 2001, the City and Congregation Etz Chaim entered into a
17 written settlement agreement ("the Settlement Agreement") resolving the prior action.
18 See SAC, Ex. A. The Settlement Agreement specified the time, place and manner in
19 which the Highland property could be used for religious purposes. Pursuant to the
20 Settlement Agreement, the prior action was dismissed with prejudice on February 1,
21 2002, with the Court retaining jurisdiction over the subject matter and the parties for a
22 period of five years.

23 The League of Residential Neighborhood Advocates and individual Hancock
24 Park homeowners¹ (collectively "plaintiffs"), none of whom were parties to the prior
25

26 ¹ The individual plaintiffs are Larry Faigin, Thomas Larkin, Edward C. Cazier,
27 Cynthia Chvatal, J. Larson Jaenicke, Eliza Lewis, Gary J. Herman, Margaret Kuhns and
28 Madeline Warren.

1 action, filed the complaint in the present action against the City of Los Angeles, James
2 Hahn and Rockard Delgadillo (collectively, the "City defendants"), as well as
3 defendants Congregation Etz Chaim and the Rubin Family Exemption Trust on July 10,
4 2003.

5 In an order dated September 15, 2003, the Court granted a motion by defendants
6 Congregation Etz Chaim and the Rubin Family Exemption Trust to dismiss plaintiffs'
7 complaint with leave to amend. The Court stated that "[t]he complaint should be
8 amended to allege the real question at issue, which is whether plaintiffs have standing
9 to collaterally attack the settlement reached in the previous action, including whether
10 the City had the power to settle the challenges posed to it in the previous action."

11 Plaintiffs filed their First Amended Complaint ("FAC") on October 9, 2003,
12 naming the City defendants and Congregation Etz Chaim as defendants. On December
13 22, 2003, the Court granted Congregation Etz Chaim's motion to dismiss the FAC with
14 prejudice. The Court stated in relevant part that:

15 One basic and fundamental assumption underlies claims 1 through 9. The
16 assumption is that the settlement agreement granted Congregation [Etz Chaim] a
17 CUP without going through the procedures required by the ordinances of City
18 and California statutory law before a CUP was granted. Plaintiff argues that the
19 right of nearby residents to take part in the hearing process on the application for
20 a CUP is a property right which cannot be evaded without violating the Due
21 Process Clause and other constitutional provisions. The defect in plaintiff's
22 argument is that the premise is wrong. The settlement agreement did not create a
23 CUP. It was reached on a compromise basis with Congregation and City each
24 giving up certain strongly held positions to obtain a settlement . . . The City
25 Charter, § 273(c), expressly allows City to settle litigation against it. This
26 settlement agreement was negotiated thoroughly before Magistrate Judge Eick,
27
28

1 was submitted to the City Council after final approval by the attorneys, was
2 considered twice by the City Council, and approved.

3 See December 22, 2003 Order at 5-6. The Court concluded that "the settlement
4 agreement does not create a CUP within the meaning of the zoning acts," and therefore
5 "all of the deficiencies alleged against it fail." December 22, 2003 Order at 6-7.

6 The City defendants filed a motion for judgment on the pleadings on March 5,
7 2004. On April 22, 2004, the Court granted City defendants' motion, concluding that
8 "the law of the case established by the December 22, 2003 Order [bars] any claim
9 predicated on the theory that the Settlement Agreement is a de facto CUP." See April
10 22, 2004 Order at 8.

11 Plaintiffs filed a second amended complaint ("SAC") on May 6, 2004, seeking a
12 declaration that the settlement agreement entered into between defendant Congregation
13 Etz Chaim and defendant City of Los Angeles in Congregation Etz Chaim v. City of
14 Los Angeles, Case No. CV 97-5042 (HJH) is invalid. See Second Amended Complaint
15 ("SAC").² Plaintiffs withdrew the claims in the FAC seeking a declaration that
16 RLUIPA is unconstitutional, but otherwise raised the same claims in the SAC as those
17 raised in the FAC.³ However, rather than alleging that the Settlement Agreement is a

18
19 ² On February 2, 2004, this action was reassigned to the Honorable Christina A.
20 Snyder by the Chief Judge of the Central District of California following the death of the
21 Honorable Harry L. Hupp.

22 ³ Specifically, plaintiffs seek to invalidate the Settlement Agreement based upon:
23 (1) violations of the Due Process Clause of the Fourteenth Amendment to the United
24 States Constitution, (2) violations of the Due Process Clause of Article I, § 7 of the
25 California Constitution, and (3) violations of state law. See Second Amended Complaint
26 ("SAC"). Plaintiffs also seek to enjoin the use of the Highland property as a place for
27 religious worship on the grounds that such use does not conform to applicable zoning laws
28 and would violate: (1) the Establishment Clause of the First Amendment to the United
States Constitution, (2) the Establishment Clause of Article I, § 4 of the California
Constitution, (3) the Equal Protection Clause of the United States Constitution, (4) the
Equal Protection Clause of of Article I, § 7 of the California Constitution, and (5) the Due
(continued...)

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C
1 "de facto CUP," plaintiffs alleged in the SAC that the City granted plaintiffs "a
2 contractual CUP or non-statutory contractual use permission." See, e.g., SAC ¶ 46.
3 Plaintiffs also alleged additional facts relevant to their state law and federal claims.

4 On May 21, 2004, City defendants filed the motion to dismiss the SAC. By
5 order dated July 13, 2004, the Court granted defendants' motion. In reaching its
6 conclusion, the Court made the following determinations that are relevant here. First,
7 the Court found that because the Settlement Agreement is not a CUP or "de facto
8 CUP," plaintiffs' argument that the Settlement Agreement granted Congregation Etz
9 Chaim permission to use the Highland property absent the notice and hearing required
10 by LMCA §§ 12.08 and 12.24 was without merit. July 13, 2004 Order at 8. Second,
11 the Court found that "the City did not delegate its broader legislative powers and
12 executive powers in violation of the California Government Code." Id. at 14.
13 Specifically, the Court rejected plaintiffs' contention that through the Settlement
14 Agreement the City had impaired its ability to revoke the granted use permission or to
15 remedy violations of zoning ordinances under LAMC §§ 12.24(Z) and 11.00(m):

16 In this action, the City is not seeking to delegate its rights to amend a
17 general zoning and land use plan required by Cal. Gov. Code §§
18 63500 et seq. Rather, the Settlement Agreement specified certain use
19 conditions applicable to the Highland property, in consideration of
20 which the Congregation agreed "not to file any action in the future . .
21 . including claims under the Religious Land Use and Institutionalized
22 Persons Act of 2000."

23 Id. at 13 (quoting Settlement Agreement ¶ 9(A) (SAC, Ex. A)). The Court further
24 noted that the Ninth Circuit, in Stephens v. City of Vista, 994 F.2d 650 (9th Cir. 1993),

25
26 ³ (...continued)

27 Process Clause of the Article I, § 7 of the California Constitution. Finally, plaintiffs seek
28 mandamus relief against the City defendants to compel enforcement of the City's zoning
laws. See SAC.

1 had concluded that an analogous Settlement Agreement did not impermissible contract
2 away legislative and government functions. *Id.* Finally, the Court found that because
3 “RLUIPA[] raised doubt as to whether LAMC §§ 12.08 and 12.24 could lawfully be
4 applied to the Congregation . . . the City properly exercised its discretion to settle
5 litigation pursuant to Los Angeles Charter § 273.” *Id.* at 10.

6 On July 22, 2004, plaintiffs appealed the December 22, 2003 Order and the July
7 13, 2004 Order to the Court of Appeals for the Ninth Circuit. On May 10, 2006, the
8 Ninth Circuit remanded the case to this Court for reconsideration of the July 13, 2004
9 Order in light of the California Court of Appeal’s recent decision in Trancas v. City of
10 Malibu, 138 Cal. App. 4th 172 (Ct. App. 2006). Pursuant to the Court’s request that
11 the parties brief the issue, plaintiffs filed an “Opening Brief” on July 3, 2006. The City
12 and Congregation Etz Chaim filed their respective responses to plaintiffs’ opening brief
13 on July 24, 2006, and on August 7, 2006, plaintiffs filed a reply to each response.
14 Having carefully considered the parties’ papers and documents filed in support thereof,
15 the Court hereby finds and concludes as follows.

16 **II. DISCUSSION**

17 The question presented is whether the California Court of Appeal’s recent
18 opinion in Trancas warrants reconsideration of the Court’s July 13, 2004 Order
19 granting defendant’s motion to dismiss plaintiffs’ second amended complaint.

20 **A. The Trancas Case**

21 Trancas arose out of long-running litigation between the City of Malibu and a
22 developer, Trancas-PCH, LLC (“Trancas-PCH”), over a 35 acre parcel of undeveloped
23 land owned by the latter. 138 Cal. App. 4th at 175-76. In 1985, the County of Los
24 Angeles approved two tentative subdivision maps, subject to various conditions. *Id.*
25 The tentative maps proposed 15 single-family lots on a 26.5 acre tract and 52
26 condominium town houses on a second smaller tract of 8.5 acres. *Id.* In 1993,
27 Trancas-PCH submitted proposed final subdivision maps to the City of Malibu, which,
28

1 in the intervening years, had acquired jurisdiction over the property. Id. The City of
2 Malibu, however, resisted processing the final maps on various grounds. Id. at 177.

3 In 2002, Trancas-PCH sued the City of Malibu to enjoin it from disapproving the
4 final maps. Id. Subsequent settlement negotiations failed, as did Trancas-PCH's
5 request for a temporary restraining order and preliminary injunction. Id. Accordingly,
6 in March 2003, the Malibu City Council unanimously disapproved Trancas-PCH's
7 final maps by resolution, on the grounds that the conditions attached to the temporary
8 maps had not been satisfied. Id.

9 Contemporaneous with the City of Malibu's consideration of the resolution, the
10 parties reentered settlement negotiations. Id. at 178. On April 14, 2003, the Malibu
11 City Council met in closed session, after which representatives of the City of Malibu
12 and Trancas-PCH arrived at a settlement, executed in a short "Deal Memo." Id. On
13 April 28, 2003, and April 30, 2003, the Malibu City Council again met in closed
14 session to consider and ultimately approve a more lengthy settlement agreement. Id.

15 By the terms of the settlement agreement, Tancas-PCH agreed (1) to dedicate the
16 larger (26.5 acre) tract to the City of Malibu for public use, (2) to scale-down its
17 development of the smaller (8.5 acre) tract, and (3) to dismiss with prejudice its
18 pending suit against the City of Malibu. Id. at 179. In return, the City of Malibu, inter
19 alia, agreed to reinstate Trancas-PCH's final map application. Id. The City of Malibu
20 also guaranteed Trancas-PCH that the proposed development would not be blocked by
21 future zoning, nor be subject to zoning density restrictions. Id.

22 Plaintiffs thereafter brought suit against the City of Malibu, seeking to set aside
23 its approval of the settlement agreement as invalid. Id. at 179-80. The Trancas court
24 agreed, invalidating the settlement agreement on two grounds:

25 First, the [settlement agreement] is intrinsically invalid because it
26 includes commitments to take or refrain from regulatory actions
27 regarding the zoning of Trancas's development project, which may
28 not lawfully be undertaken by contract. Second, the [settlement

1 agreement] is also invalid as a municipal act because its adoption in
2 closed city council session violated the Brown Act.

3 Id. at 180-81.

4 With respect to the first ground, the Trancas court noted that the settlement
5 agreement included a provision whereby the City of Malibu agreed not to enact
6 “zoning or other ordinances applicable to the property that prohibit the construction of
7 the residential units depicted in the final map, as limited by the terms of the covenant . .
8 . . .” Id. at 181. Relying on Avco Cmty. Developers, Inc. v. South Coast Reg’l Comm.,
9 17 Cal. 3d 785 (1976), the court held that such a promise to “abjure legislative zoning
10 action” by contract was an unlawful under California Supreme Court precedent. Id.
11 Specifically, the court quoted Avco for the proposition that where a contract between a
12 municipality and developer “constituted a promise by the government that zoning laws
13 thereafter enacted would not be applicable to the tract, the agreement [is] invalid and
14 unenforceable as contrary to public policy. . . . Land use regulations, such as the then
15 coastal act, involve the exercise of the state’s police power, and it is settled that the
16 government may not contract away its right to exercise the police power in the future.”
17 Id. (quoting 17 Cal. 3d at 799-800) (internal citations and brackets omitted).

18 The Trancas court also pointed to a settlement agreement provision stating that
19 the revised development project “shall conform to the City’s zoning code in effect as of
20 the date of the recordation of said covenant, *except any limitations on density which*
21 *vary from the terms of the covenant.*” Id. (emphasis added). The court found the
22 restriction on the City of Malibu’s zoning authority invalid, reasoning that:

23 This contractual exemption from an element of the city’s zoning is
24 indistinguishable from the one condemned by Avco. Moreover, it
25 functionally resembles a variance. Such departures from standard
26 zoning, however, by law require administrative proceedings,
27 including public hearings, followed by findings for which the instant
28 density exemption might not qualify. Both the substantive

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1 qualifications and the procedural means for a variance discharge
2 public interests. Circumvention of them by contract is impermissible.

3 Id. at 182 (citations omitted).

4 As previously noted, Trancas also invalidated the settlement agreement because
5 it was adopted in closed city council session in violation of the Brown Act, Gov. Code
6 § 54950, et seq. Id. at 187. The court construed § 54956.9 of the Brown Act, which
7 provides in relevant part: "Nothing in this chapter shall be construed to prevent a
8 legislative body of a local agency, based on advice of its legal counsel, from holding a
9 closed session to confer with, or receive advice from, its legal counsel regarding
10 pending litigation when discussion in open session concerning those matters would
11 prejudice the position of the local agency in the litigation." The court in Trancas found
12 that while § 54956.9 had been interpreted to allow cities to adopt settlements in closed
13 session,

14 the exemption cannot be construed to empower a city council to take
15 or agree to take, as part of a non-publicly ratified litigation settlement,
16 action that by substantive law may not be taken without a public
17 hearing and an opportunity for the public to be heard. As a matter of
18 legislative intention and policy, a statute that is part of a law enacted
19 to assure public decision-making, except in narrow circumstances,
20 may not be read to authorize circumvention and indeed violation of
21 other laws requiring that decisions be preceded by public hearings,
22 simply because the means and object of the violation are settlement of
23 a lawsuit. Under this vital construction of section 54956.9, the city
24 council's closed session adoption of the SA, thereby in essence
25 granting Trancas a zoning variance for its 32-unit project, was not
26 authorized by the section, and hence violated the Brown Act's open
27 meeting requirements.

28 Id. at 186.

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1 **B. Whether the Settlement Agreement Contractually Circumvents**
2 **Applicable Zoning Laws or Impermissibly Abrogates the City's**
3 **Zoning Authority under Trancas**

4 Plaintiffs contend that the Settlement Agreement is invalid under the first prong
5 of Trancas because, as in that case, it impermissibly allows the City to contractually
6 circumvent applicable zoning laws. Opening Brief at 2. In particular, plaintiffs argue
7 that the Settlement Agreement grants Congregation Etz Chaim the "functional
8 equivalent" of a CUP without requiring it to comply with the provisions of LAMC §§
9 12.08 and 12.24.⁴ Id. at 2-8.

10 The Court disagrees. First, the density exemption in Trancas is distinguishable
11 from the use permission granted under the Settlement Agreement. As the Court has
12 previously concluded, the Settlement Agreement does not grant Congregation Etz
13 Chaim the functional equivalent of a CUP. See July 13, 2004 Order at 7 ("the
14 Settlement Agreement is not a de facto CUP"), April 22, 2004 Order at 8. The
15 Settlement Agreement arose out of long and expensive litigation concerning whether
16 application of the City's zoning ordinances to Congregation Etz Chaim violated
17 RLUIPA. See December 22, 2003 Order at 5-7. As explained more fully in the Court's
18 December 22, 2003 Order, the Settlement Agreement represents the parties'
19 compromise regarding the applicability and scope of RLUIPA. See id. at 6.
20 Accordingly, the document is framed in terms of obligations, rather than "conditions
21 laid down as a condition of its granting." Id. at 6. The Settlement Agreement specifies
22 the time and manner in which the Highland property may be used for religious
23 activities. See Settlement Agreement. It also specifies that the Highland property shall
24 maintain its residential character and architecture in keeping and conformity with R-1
25 zoning. See id. ¶ VI(A) ("The single family use of the property located at 303 South

26
27 ⁴ As previously noted, LAMC §§ 12.08 and 12.24 prohibit use of property as a
28 synagogue in an R-1 zone absent approval procedures, including public notice and
hearings.

1 Highland Avenue, Hancock Park, shall be restored and maintained, including the
2 residential character and architecture, and in accordance with the terms of this
3 agreement”). Importantly, the Settlement Agreement bars transfer of Congregation Etz
4 Chaim’s rights and obligations thereunder: “[Congregation Etz Chaim] shall not have
5 the authority to transfer any rights or obligations conferred on [Congregation Etz
6 Chaim] pursuant to this Settlement Agreement to any other persons, organizations or
7 groups.” Id. ¶ VII. The foregoing facts convince the Court that, unlike the density
8 exemption at issue in Trancas, the use permission granted to Congregation Etz Chaim
9 does not “functionally resemble a variance” or CUP. See 138 Cal. App. at 182. The
10 public notice and hearings requirements of LAMC §§ 12.08 and 12.24 thus do not
11 apply to the Settlement Agreement. Accordingly, the City and Congregation Etz
12 Chaim cannot be said to have circumvented those laws by entering into the Settlement
13 Agreement.

14 Moreover, in contrast to Trancas, by the Settlement Agreement the City does not
15 contractually promise to take or refrain from taking regulatory action in the future. See
16 id. at 181. Nor does the City, in further contrast to Trancas, guarantee that it will not
17 enact future zoning changes. See id. at 179. Indeed, the Settlement Agreement does not
18 appear to limit the City’s authority to alter or amend the zoning laws applicable to
19 Congregation Etz Chaim in any way. The City remains free to fully enforce its zoning
20 codes against Congregation Etz Chaim. Accordingly, and as the Court has previously
21 held on the facts of this case, the City has not impermissibly contracted away the right
22 to exercise its police powers or zoning authority, the factors found decisive in Trancas.
23 See id. at 182. In sum, nothing in the first prong of Trancas warrants reconsideration of
24 the Court’s prior decision.⁵

25
26 ⁵ The public policy considerations identified in the December 22, 2003 Order which
27 bolster the Court’s conclusion still obtain. There, the Court observed that if the City did
28 not have the power to reach a compromise agreement in the present circumstances “a
(continued...)

1 Etz") at 13-15. Assuming that Congregation Etz Chaim is operating a synagogue *in*
2 *violation of* the Settlement Agreement, it is the terms of the Settlement Agreement that
3 remain relevant to the Court's present analysis. By its terms, the Settlement Agreement
4 does not accomplish or provide for action that requires a public hearing under LAMC
5 §§ 12.08 and 12.24; it therefore does not violate the Brown Act. Accordingly, the
6 Court finds that the second prong of Trancas does not furnish grounds upon which to
7 modify its prior decisions that the Settlement Agreement is valid.⁶

8 Additionally, as noted by Congregation Etz Chiam, plaintiffs' challenge to the
9 Settlement Agreement under the Brown Act is untimely. Pursuant to § 54960.1, any
10 interested person seeking a judicial determination that an action taken by a legislative
11 body in violation of the Brown Act is null and void, must make a written demand
12 within 90 days from the date the action was taken. Cal. Gov. Code § 54960.1(a)-(c).
13 The legislative body in receipt of such a demand has 30 days in which to cure the
14 challenged action or inform the demanding party of its decision not to cure. Cal. Gov.
15 Code § 54960.1(c)(2). Failure by the legislative body to take action within the 30-day
16 period is deemed a decision not to cure. Cal. Gov. Code § 54960.1(c)(3). The
17 demanding party is thereafter required to commence suit within 15 days of receiving
18 written notice from the legislative body, or within 15 days of the expiration of the 30-
19 day period to cure, whichever is earlier. Cal. Gov. Code § 54960.(c)(4).

20 In the present case, the Settlement Agreement, by which the City took the challenged
21 action, was approved September 27, 2001. Plaintiffs did not file their action until July
22 10, 2003, well after expiration of the limitations period. Accordingly, on this
23 alternative ground, plaintiffs' reliance on the Brown Act is unavailing.

24
25
26 _____
27 ⁶ Nothing in this order, however, is intended to prevent plaintiffs from challenging
28 Congregation Etz Chaim's actual use of the Highland Property on other legal theories.
Nor does it prevent the City from seeking to enforce the terms of the Settlement
Agreement against Congregation Etz Chaim.

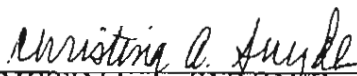
1 In sum, the Court concludes that the California Court of Appeal's opinion in
2 Trancas does not require the Court to reconsider its July 13, 2004 Order granting
3 defendants' motion to dismiss plaintiffs' second amended complaint.

4 **IV. CONCLUSION**

5 In accordance with the foregoing, the Court declines to reconsider the July 13,
6 2004 Order.

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8 IT IS SO ORDERED.

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11 Dated: August 14, 2006

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14 CHRISTINA A. SNYDER
15 United States District Judge
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