

Goldstone Decision Upholds Local Jurisdictions' Right to Reject Forced Conversions and the Chino Decision then Whittles Away at that Right **Help GSMOL Preserve That Right**

By: Attorney Will Constantine

Over the last decade, one of the biggest threats to manufactured home rent control has been the forced conversion of manufactured home parks to subdivisions against the wishes of the parks' homeowners. When that occurs, homeowners are forced to pay unaffordable prices for their lots, which eventually cause them to lose all the equity that they have invested in their homes.

In order to prevent this from occurring, in 2002 GSMOL successfully sponsored AB 930, which requires park owners who wish to subdivide their parks to first "obtain a survey of support of the residents of the mobile home park for the proposed conversion" and then requires the local jurisdiction reviewing the park's conversion application to consider the results of that survey in making their decision to approve or disapprove the conversion. However, over the last five years, park owners have convinced some local jurisdictions and courts that conversion applications cannot be disapproved based on the results of those surveys.

On July 17, 2012, California's Sixth District Court of Appeal took a giant step in stopping these forced conversions when it strongly ruled that the County of Santa Cruz "was authorized to take the results of the resident survey into account when it made its decision - as the reason for denying" Alimur MHP's conversion application (the "Goldstone decision"). In that case, the homeowners voted 119 to 2 opposing the conversion. On October 24, 2012, the California Supreme Court then preserved that ruling by refusing to grant the Park's Petition requesting the Supreme Court to review that case. That is the great victory which we have been waiting for many years now, and it is already being used to prevent other parks' conversions that are opposed by their homeowners, such as, on November 5, 2012, when, in reliance on that decision, a Superior Court upheld Sonoma County's denial of the conversion of Sequoia Gardens Manufactured Home Park.

However, on October 31, 2012, the Fourth District Court of Appeal began whittling away at the Goldstone decision in its new ruling overturning the City of Chino's denial of Lamplighter MHP's conversion application. (the "Chino decision") In that decision, the Fourth District ruled that although it agreed with Goldstone that local jurisdictions could reject conversions based on the results of the required resident support surveys, they can only do so if those results demonstrate that the conversions are a "sham" intended solely to avoid rent control, and the fact that a majority of the residents voted to oppose the conversion was not sufficient to demonstrate that. Even worse than that, the Chino decision then held that the fact that only 35% or even only 20% of the residents voted to support a conversion (i.e., that 65% and 80% of the residents voted to oppose a conversion) were not sufficient grounds for rejecting a conversion because those small amounts of support were sufficient to demonstrate that the conversions were not "sham conversions." Instead, it stated that a local jurisdiction could only reject a conversion when the survey results demonstrate that "only a trivial handful of the lots" support the conversion, such as the results in the Goldstone case demonstrated when only 2 residents supported and 119 opposed that conversion.

The Chino decision went even further and then ruled that in making that evaluation, a local jurisdiction could only consider the results of those who participated in the survey, regardless of how small that participation was, and that it could not consider the fact that an overwhelming majority of a park's residents did not participate in the survey. The Chino decision was referring to the fact that Lamplighter MHP had 260 spaces but only 33 voted in the resident support survey because the remaining residents considered it to be an unfair and deceptive survey and were boycotting it. Of those 33 residents who voted, the votes still turned out to be 19 to 14 against the conversion, (i.e., 58% opposed to 42% supporting). The 14 votes in favor of the conversion only represented a 5% level of support of the entire park of 260 lots and, on that basis, the City of Chino had concluded that the park owner failed to demonstrate resident support and rejected the conversion. The Fourth Circuit Court of Appeal, however, ruled that the City had to count those 14 votes as representing a level of 42% support rather than 5% because it had to ignore the residents who did not participate in the survey because their lack of participation meant that the nonparticipating residents "did not care enough to return the survey," which the court said was further evidence that it was not a sham conversion.

Although the Goldstone decision is a great victory and can be now used to stop many conversion, such as it was used to stop the Sequoia conversion (where the results were 162 to 2 opposing the conversion), the Chino decision will be a disaster because it will also be used to force local jurisdictions to approve many more "forced conversions," in which park owners pull the scam off, without prior notice to the homeowners, sending out confusing surveys that obtain a very low level of response (i.e. 33 out of 260 in Lamplighter) and then even when

only a minority of that small survey participation supports the conversion (i.e. 14 out of 260 or 5% in Lamplighter), they will have to approve the conversion because the Chino decision now mandates that those results must be counted as 42% in favor rather than 5% in favor, thereby, demonstrating that it is not a sham conversion. This will have a devastating statewide impact, which already began on November 5, 2012 when the park owner of Monarch MHP in Goleta filed a motion asking the Second District Court of Appeal to reopen the briefing in that case to allow them to argue how the Chino decision requires the approval of that conversion.

The good news is that just as in 2002, when GSMOL stepped up to bat and successfully sponsored AB 930 which created your power to stop these forced conversions with the tool of the resident support survey, it is again stepping up to bat to stop the Chino decision from being used to destroy the tool by financing a Petition for Review to the Supreme Court, asking them to take up and overturn the Chino decision. However, GSMOL needs your help and you can now do two things. First, be aware, and remember that your park owner may attempt to sneak through a sham survey because the Chino decision now encourages them to do so. If that were to occur, you need to immediately seek legal assistance to stop that. Second, and even more important, GSMOL needs your help in raising funds to pay for GSMOL's efforts in getting the Supreme Court to take up and overturn the Chino decision before it is too late.

Will Constantine is an attorney who represents manufactured homeowners in asserting their rights, including fighting rent increases and opposing the conversion of manufactured home parks. If your park owner begins a conversion of your park (i.e. by sending you a "resident support survey"), you should immediately contact Mr. Constantine's office for assistance, at 831-420-1238.