Docket No. 06-56306

In the

United States Court of Appeals

For the

Ninth Circuit

DANIEL GUGGENHEIM, ET AL.

Plaintiffs-Appellants,

v.

CITY OF GOLETA

Defendant-Appellee,

Appeal from a decision of the United States District Court
for the Central District of California (Los Angeles)
Case No. CV 02-02748 FMC (RZx) – Honorable Florence-Marie Cooper

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BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION SUPPORTING PLAINTIFFS-APPELLANTS GUGGENHEIM, et al. AND REVERSAL OF THE DISTRICT COURT'S *SUA SPONTE* GRANT OF SUMMARY JUDGMENT

Karen K. McCay, Esq. (SBN 187664)
Sonia S. Shah Esq. (SBN 200709)
Anthony J. Adair Esq. (SBN 246811)
PAHL & McCAY
225 W. Santa Clara St., Suite 1500
San Jose, CA 95113
kmccay@pahl-mccay.com
(408) 286-5100
Attorneys for Amicus Curiae CAA

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I.

INTRODUCTION

A. IDENTITY OF AMICUS CURIAE AND AUTHORITY TO FILE AMICUS BRIEF

California Apartment Association ("CAA" or "Amicus") submits the following Brief of Amicus Curiae supporting Plaintiffs and Appellants Daniel Guggenheim, Susan Guggenheim, and Maureen Pierce (hereinafter referred to as "Park Owners" or "Petitioners") and supporting reversal of the District Court's *sua sponte* grant of summary judgment in favor of Defendant and Appellee City of Goleta (hereinafter referred to as "the City" or "Appellee"). Pursuant to Federal Rule of Appellate Procedure 29(a), Amicus asked all counsel to consent to the filing of this Amicus Brief; however, the City declined. As a result, this Amicus Brief is being submitted in accordance with Rule 29(b) and concurrently with CAA's Motion for Leave to File an *Amicus* Brief.

CAA is the largest statewide rental housing trade association in the country, representing more than 50,000 owners and operators who are responsible for nearly two million rental housing units throughout California. CAA represents a diverse membership ranging from

California's largest property management companies and developers to individuals who own a single rental unit. CAA encourages and supports the fair, ethical and professional operation of rental housing. CAA's primary mission is to advocate on behalf of rental property providers in legislative, regulatory and judicial venues. CAA has appeared previously before this Court and several other courts in an *amicus* capacity to both assist courts in their analysis and promote the interests of CAA's members.

B. CAA'S INTEREST IN THIS CASE

CAA is opposed to government control of rents and believes strongly that rent control is as damaging to renters as it is to rental property owners. CAA believes that the best way to ensure the existence of safe, affordable homes with stable rents is for government to recognize and harness market forces by establishing policies that encourage the construction of new housing and to support investment in existing housing.

In states like California, with its rapidly growing population, CAA believes rent control can be especially destructive because it discourages the construction of new housing at precisely the time it's needed most. While CAA is equally opposed to excessive rent increases, the Association firmly believes that a property owner should be allowed to produce sufficient

income to accommodate the basic needs of residents at the property.

To the extent rent control ordinances such as the City of Goleta Mobile Home Rent Control are enacted in this State, CAA contends that, in light of the U.S. Supreme Court's decision of Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005), such ordinances should be re-evaluated to determine whether or not the ordinances substantially advance legitimate state interests as opposed to the rational-relationship standard previously applied in Pennell v. City of San Jose, 485 U.S. 1 (1988) and its progeny. This is especially true for mobile home rent control where, as here, it is undisputed that there is no mechanism for preventing mobile home owners from capturing the present value of the reduced rents as a premium on the sale of their mobile homes.

II.

STATEMENT OF FACTS

As this Court is well aware, this case has had a long and interesting procedural history. Because the facts and procedural history of this case are fully set forth in both Appellants' Replacement Opening Brief ("AOB") filed on January 22, 2007, [AOB, 4-13] and the City's Answer Brief ("CAB"), filed on March 12, 2007, [CAB, 3-10], a comprehensive statement

of facts is not repeated herein. Instead, *Amicus* includes the following brief summary of facts just for the sake of completeness of this *Amicus* Brief.

This case is before the U.S. Court of Appeals for the Ninth Circuit on appeal from the grant of summary judgment *sua sponte* by the U.S. District Court for the Central District of California in favor of the City and against the Park Owners. [Excerpt of Record ("ER") [ER 2079-84]. In 1997, Park Owners became the owners of the Ranch Mobile Estates mobile home park in the City of Goleta, County of Santa Barbara. The County of Santa Barbara ("County") enacted a mobile home rent control ordinance in 1979, which was amended in 1987. In 2002, the City incorporated within the County and the City adopted by reference most provisions of the County's Code, including the County's mobile home rent control ordinance, as permanent City ordinances. [City of Goleta Ordinance No. 02-17]. The parties stipulated that there was a gap in time when no rent control ordinance was in effect over the Park. [ER 304-05].

At the time the District Court granted summary judgment in favor of the City, the issues pending before the District Court were the Park Owner's facial challenges to the City of Goleta's Mobilehome Rent Control Ordinance ("RCO") [Goleta Municipal Code § 8.14.010 *et seq.*] having

alleged violations of the Takings Clause, the Due Process Clause and the Equal Protection Clause. [ER 2079-84]. Among other issues that have been extensively addressed in the briefs of the Parties and other *amicus,* the District Court granted summary judgment against Appellants on the substantive due process claims finding "there is no evidence of arbitrary or unreasonable conduct on the part of the government in enacting the ordinance in this case." [ER 2079-84]. For these and other reasons unrelated to the issues presented herein, judgment was entered in favor of the City. Appellant timely appealed.

III.

LEGAL ARGUMENT

A. ISSUE PRESENTED BY AMICUS CURIAE

Prior to the U.S. Supreme Court's decision in Lingle v. Chevron U.S.A., Inc., 544 U.S. 529 (2005), the U.S. District Court in the case below granted a motion for partial summary judgment in favor of Appellants finding the City's RCO unconstitutional because it failed to substantially advance its stated purpose, relying on earlier cases of this Court.[1] [ER 461-

[1]Richardson v. City and County of Honolulu, 124 F. 3d 1150 (9th Cir. 1997), Cashman v. City of Cotati, 374 F.3d 887 (9th Cir. 2004), *opinion withdrawn*, Cashman v. City of Cotati, 415 F.3d 1027 (9th Cir. 2005);

70]. After the Supreme Court's decision in Lingle, the parties stipulated to vacate the judgment and reinstated the case to the civil active list. [ER 652-55]. This, however, should not have been the end of Lingle's application to this case. Instead, the District Court should have applied the "substantially advances" formula to the RCO as part of its substantive due process inquiry and concluded the RCO was invalid.

B. UNDER LINGLE, THE COURT MUST EVALUATE THE SUBSTANTIVE DUE PROCESS CLAIM UNDER THE "SUBSTANTIALLY ADVANCES" FORMULA.

At issue in Lingle, was a Hawaii statute which limited the rent that oil companies may charge dealers leasing company-owned service stations. Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 533 (2005). The issue before the Supreme Court was whether "the 'substantially advances' formula advanced in *Agins* is an appropriate test for determining whether a regulation effects a *Fifth Amendment* taking." Lingle, 544 U.S. at 532. The Supreme Court ultimately concluded it was not. Id. at 545.

In reaching this conclusion, the Supreme Court conducted an extensive analysis as to the development of the "substantially advances"

Chevron v. Lingle, 363 F.3d 846 (9th Cir. 2004), *reversed and remanded by* Lingle v. Chevron U.S. Inc., 544 U.S. 528 (2005).

formula and found that it was an appropriate inquiry for a due process challenge. The Supreme Court stated:

> The "substantially advances" formula suggests a means-end test: It asks, in essence, whether a regulation of private property is *effective* in achieving some legitimate public purpose. An inquiry of this nature has some logic in the context of a due process challenge, for a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the *Due Process Clause*.

Lingle, 544 U.S. at 542 (emphasis in original). A reasonable interpretation of Lingle leads one to conclude the "substantially advances" formula is a much more significant factor in substantive due process analysis than was the case when decisions in cases such as Carson Harbor Village Ltd. v. City of Carson, 37 F.3d 468 (1994) were made.

Since Lingle, other courts have started looking to its analysis in the context of a due process challenge. In S. G. Borello & Sons, Inc. v. City of Hayward, 3006 U.S. Dist. LEXIS 86293 (2006), the U.S. District Court for the Northern District of California recognized:

> *Lingle* eviscerated the "substantially advances" theory of takings jurisprudence that the Ninth Circuit had developed in a series of case. [Citations]. In doing so, the Court suggested the availability of a substantive due process challenge

> to a regulatory taking. [Citations]. Justice Kennedy's concurrence further encouraged resort to the *due process clause*: "[t]his separate writing is to note that today's decision does not foreclose the possibility that a regulation might be so arbitrary or irrational as to violate due process." [Citations].

S. G. Borello & Sons, Inc. v. City of Hayward, 3006 U.S. Dist. LEXIS 86293, *9-10 (2006) (citations omitted). See also Shaw v. County of Santa Cruz, 170 Cal. App. 4th 229 (2008). In Shaw, the California Court of Appeal found:

> The essential test under *Landgate* is whether the government's assertion of authority, whether or not erroneous, advanced some legitimate purpose, which is measured not by inquiry into the subjective motive of the government agency but by "whether there is objectively, sufficient connection between the land use regulation in question and a legitimate governmental purpose so that the former may be said to substantially advance the latter."

Shaw, 170 Cal. App. 4th at 278 (*quoting* Landgate, Inc. v. California Coastal Commission, 17 Cal. 4th 1006, 1022 (1998)).

While the California Court of Appeal in Shaw concluded the test was satisfied in that case, and the District Court in S. G. Borello & Sons, Inc. did not resolve the issue, but instead gave the Plaintiff leave to file an amended

complaint, these cases support CAA's argument that a further analysis by the Ninth Circuit as to whether the Supreme Court's decision in Lingle requires a higher level of scrutiny of the Appellant's substantive due process claims than was performed in this case.

C. IT IS UNDISPUTED THAT THE RCO DOES NOT SUBSTANTIALLY ADVANCE ANY GOVERNMENT INTEREST

While performing a Takings analysis, the Ninth Circuit has held that where a rent control ordinance results in the creation of a premium upon the sale of a mobile home and does not contain a mechanism that prevents the mobile home owner from capturing that premium, the ordinance does not substantially advance the purpose of advancing affordable housing. Richardson v. City and County of Honolulu, 124 F.3d 1150, 1165-1166 (1995); Cashman v. City of Cotati, 374 F.3d 887 (9th Cir. 2004), *opinion withdrawn*, Cashman v. City of Cotati, 415 F.3d 1027 (9th Cir. 2005); See also Hall v. City of Santa Barbara, 833 F.2d 1270, 1281 (9th Cir. 1986). In Hall, the Ninth Circuit found:

> If appellants' allegations are substantiated, there would be significant doubt whether these purposes are achieved, or could be rationally thought to be achievable. If appellants are able to prove their allegations, it would seem that the Santa Barbara

> ordinance will do little more than give a windfall to current mobile park tenants at the expense of current mobile park owners.

Id. Applying the substantially advances formula to the RCO, the District Court found in its first summary judgment order, "the uncontroverted facts of this case establish the existence of a premium. The ordinance at issue contains no mechanism for preventing mobile home owners from capturing the present value of the reduced rents as a premium on the sale of their mobile homes. As such, the ordinance fails to substantially advance its stated purpose." [ER 461-70]. Interpreting Lingle to require the application of the "substantially advances" formula to the substantive due process claims, this Court must find the RCO is invalid.

IV.

CONCLUSION

As the Supreme Court found in Lingle, the "substantially advances" formula prescribes an inquiry in the nature of a due process test. While the District Court made that determination as part of its Takings analysis, the ultimate conclusion is the same under a due process theory. As such, the Ninth Circuit must find the RCO invalid.

DATED: April 16, 2010

PAHL & McCAY
A Professional Corporation

By: /s/
Karen K. McCay
Sonia S. Shah
Anthony J. Adair

Attorneys for Amicus Curiae
California Apartment Association

CERTIFICATE OF COMPLIANCE
Pursuant to Fed. R. App. P. 32 (a)(7) and
Circuit Rule 32-1 for Case No. 07-56697

I certify that Pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached Amicus Brief is proportionally spaced, has a typeface of 14 points or more and contains 2,029 words.

4/16/2010
Date

/s/
Karen K. McCay

CORPORATE DISCLOSURE STATEMENT
[Federal Rule of Appellate Procedure 26.1]

Amicus Curiae California Apartment Association does not have any parent corporation and no publicly held corporation owns 10% or more of its stock.

4/16/2010
Date

/s/
Karen K. McCay