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CERTIFIED FOR PARTIAL PUBLICATION*

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MHC FINANCING LIMITED PARTNERSHIP TWO, Plaintiff and Appellant, v. CITY OF SANTEE, Defendant and Respondent.	D053345 (Super. Ct. No. GIC777094)
CITY OF SANTEE, Plaintiff, Cross-defendant and Respondent, v. MHC FINANCING LIMITED PARTNERSHIP TWO, Defendant, Cross-complainant and Appellant.	D054298 (Super. Ct. No. GIE020524) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of part II.B.

THE COURT:

It is ordered that the opinion filed herein on March 15, 2010, and reported in the Official Reports (182 Cal.App.4th 1169) be modified as follows:

In the *published* portion of the opinion:

1. On page *5, the first footnote in the opinion, erroneously numbered "2" and beginning with the words "MHC's allegation that," is renumbered as footnote 1. This will require renumbering of all subsequent footnotes.

2. On page *6, in the footnote beginning "The trial court stated that," the second sentence, beginning with the word "However," is deleted, and newly renumbered footnote 2 now reads in full as follows:

> The trial court stated that Ordinances 381 and 412 "impermissibly restrict and chill mobilehome park owners' exercise of their rights to utilize the process" of seeking a rent adjustment.

In the *nonpublished* portion of the opinion:

3. On page 32, in the first full paragraph, after the last sentence in that paragraph, which reads "We reject the invitation[,]" add as footnote 20 the following footnote, which will require renumbering of all subsequent footnotes:

> In its petition for rehearing, MHC argues that "because the City, by enforcing the Unconstitutional Provisions, has prevented MHC from filing a rent increase petition," it should be permitted to pursue its as-applied takings and due process claims claim despite its failure to seek a rent adjustment and obtain a final decision from the Commission as to how the Ordinances apply to the Park. In support of its argument, MHC cites *Palazzolo v. Rhode Island* (2001) 533 U.S 606. This argument was not developed in MHC's appellate briefing. At most, the issue was alluded to

> in MHC's reply brief without any citation to authority, when MHC argued that by taking the position that MHC's as-applied claims were not ripe, the City was trying to "benefit from its own unconstitutional conduct," and that "the reason MHC did not file a rent increase petition with the City is that *the City prevented MHC from doing so* by enforcing the Unconstitutional Provisions." "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) Therefore, the issue is not properly before us.

4. On page 34, in the first paragraph under subheading (b), in the first sentence replace the words "second and fourth" with the words "second through fourth" so the sentence reads:

> According to MHC, the second through fourth causes of action in the amended cross-complaint also contain facial challenges to the Ordinances based on takings and substantive due process grounds.

5. On page 36, line 8 (the paragraph commenced on page 35), at the end of the last sentence of that paragraph, which reads "As we will explain, neither point has merit[,]" insert the following consecutively numbered footnote:

> In its petition for rehearing, MHC contends that its facial regulatory takings claim (presumably pled in the amended cross-complaint's third cause of action) can either be unripe or barred by the statute of limitations, but not both. MHC contends that we should consider whether it has "exhausted its state remedies," and if we find that it has not done so, then we should conclude that MHC's facial regulatory taking claim is "unripe and thus by definition cannot be barred by the statute of limitations." This argument fails because it improperly attempts to apply the concept of exhaustion of state remedies, which is a concept of ripeness applicable in federal court litigation involving alleged regulatory takings. (*Bronco Wine Co. v. Jolly* (2005) 129 Cal.App.4th 988, 1034 [the exhaustion rule "applies to limit federal court jurisdiction to hear premature takings claims"].) Further, as MHC acknowledged in the trial court, the City has never made any ripeness challenge to MHC's facial takings claims.

6. On page 41, after the last sentence of the first full paragraph, ending with the words "statute itself[,]" insert the following consecutively numbered footnote:

> Even if, as MHC argues in its petition for rehearing, the private takings claim should be classified as an *as-applied* claim (see *Hacienda Valley Mobile v. Morgan Hill* (9th Cir. 2003) 353 F.3d 651, 656), any as-applied claim in the original cross-complaint would fail on the same ground as the as-applied claims pled in MHC's amended cross-complaint. Specifically, as explained above, each of MHC's as-applied claims are barred because MHC did not obtain a final decision from the Commission as to how the Ordinances apply to the Park. (*Williamson*, *supra*, 473 U.S. at p. 186; *Sandpiper*, *supra*, 10 Cal.App.4th at p. 549; *Montclair*, *supra*, 76 Cal.App.4th at p. 790, fn. 2; *Smith*, *supra*, 225 Cal.App.3d at p. 54.) Significantly, the City's demurrer to the original cross-complaint specifically identified lack of ripeness due to MHC's failure to obtain a final decision from the Commission as one ground for demurrer to MHC's as-applied claims, and on that ground we affirm the trial court's order sustaining the demurrer as to any as-applied claims in the original cross-complaint.

There is no change in the judgment.

Appellant's petition for rehearing is denied.

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BENKE, Acting P. J.

Copies to: All parties