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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

**COPY**

GEORGE SCOTT, et al.,

Plaintiffs and Appellants

v.

FRANK TAYLOR, as Executive  
Director, etc., et al.,

Defendants and Respondents.

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H009720  
(Santa Clara County  
Super.Ct.No. 708400)

**FILED**

OCT 21 1993

Court of Appeal - Sixth App. Dist.  
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Statement of the Case

On December 12, 1990, the Board of Directors of The Redevelopment Agency of the City of San Jose (the Agency) adopted a resolution authorizing the Agency to enter an agreement with CityTeam Ministries (CityTeam) to purchase real property in downtown San Jose where CityTeam operated the San Jose Rescue Mission (Rescue Mission) and to pay costs associated with reestablishing the Rescue Mission at another location.

On January 9, 1991, Plaintiffs George Scott, Stanley Kuehne, Dudley Deas, and Ruth Goldstein, residents and taxpayers of Santa Clara County, filed a complaint against the Agency, seeking, among other things, a declaration that the expenditure of funds to relocate the Mission was

unconstitutional and a temporary restraining order and temporary and permanent injunctions prohibiting such an expenditure from taking place. The court denied plaintiffs' request for a temporary restraining order and a temporary injunction. Plaintiffs then filed an amended complaint, seeking, among other things, the imposition of a constructive trust on monies provided to CityTeam by the Agency and an order compelling their reconveyance to the Agency.

Plaintiffs now appeal from a judgment entered on the amended complaint in favor of the Agency. They claim that the trial court erred in concluding that the Agency's expenditure of funds does not violate federal and state constitutional provisions prohibiting the appropriation of funds to aid sectarian institutions (Cal. Const., art. XVI, § 5), the establishment of religion (U.S. Const., 1st Amend.; Cal. Const., art. I, § 4) and the preferential treatment of a particular religion (Cal. Const., art. I, § 4). We disagree and affirm the judgment.

#### Facts

The City of San Jose (City) and the Agency have over a long period of time sought to redevelop and revitalize the downtown area by, among other things, constructing high density housing units. The Downtown Working Review Committee identified as possible housing sites parcels of land on Julian and First Streets adjacent to the Julian-

Stockton Redevelopment Project Area in downtown San Jose. This land and the appurtenant buildings were owned by CityTeam and operated as the Rescue Mission.<sup>1</sup> Later the Agency specifically determined that its redevelopment goal would be furthered by acquiring this property.

Aware of the Agency's plans, CityTeam immediately began a search for a new location for the Rescue Mission. It evaluated many sites but only two, one on Old Bayshore, the other on Timothy Drive, met its requirements concerning "proximity to the homeless, price and compatibility of site buildings with CityTeam needs, conformity with zoning requirements, and minimized community impact." Even then, major renovations were needed to render this location suitable for use by the Rescue Mission.

The Agency understood that if and when the Agency purchased CityTeam's property and displaced the Rescue Mission and people residing there, it would become legally obligated to pay for both the real property and the cost of relocation. (See Health & Saf. Code, § 33415; Gov. Code, §§ 7262, 7272.3.) Consequently, the Agency and CityTeam

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<sup>1</sup> CityTeam is a nonprofit Christian religious corporation dedicated to "glorify God through serving people in need, proclaiming the Gospel and establishing disciples among disadvantaged people of the cities[.]" It operates the San Jose Rescue Mission, where it seeks to address "the social, emotional and spiritual needs as well as the physical needs of the poor, homeless and chemically addicted," by providing "daily meals, limited housing, clothing, showers, medical needs, family counseling, furniture, appliances and the like."

commenced lengthy negotiations concerning a price for the property and the cost of relocating the Rescue Mission at the new site. (See Gov. Code, § 7267.1<sup>2</sup>) As to the latter costs, the Agency made it clear from the beginning that it would only pay what was needed to reestablish the existing Rescue Mission programs at the new location, including the cost of physical improvements, fees, permits, and related professional services. It would not cover costs associated with CityTeam's plans to expand or create different programs at the new sites. These costs were the responsibility of CityTeam. The Agency also indicated that CityTeam could not use monies provided by the Agency for expansion or operational expenses. As a result, CityTeam initiated a fund raising program to acquire capital for these purposes.

The Department of Neighborhood Preservation contracted for an appraisal of CityTeam's property, and it was given a fair market value of \$2,095,325. In addition, John Doll, a project economist for the Agency, evaluated the existing Rescue Mission site and programs and reviewed CityTeam's architectural plans for the new sites. He then prepared a

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<sup>2</sup> Government Code section 7267.1 requires public agencies to make "every reasonable effort to acquire expeditiously real property by negotiation." Indeed, before it may commence a condemnation action, a public entity must have the property it intends to acquire appraised, establish an amount believed to be just compensation, and make an offer based thereon to the owner. (Gov. Code, § 7267.2, subd. (a).)

Unless otherwise specified, all further statutory references are to the Government Code.

detailed written report, analyzing each aspect of CityTeam's plans and carefully segregating replacement from expansion costs to determined the amount the Agency would provide to relocate the Rescue Mission.

His analysis was then reviewed by Alex Gourtzemis, a construction manager for the Agency, to determine whether certain costs could be lowered. The total estimated cost of relocation over and above the cost of buying CityTeam's downtown property was estimated to be \$9,509,000.

On December 12, 1990, the Board of Directors of the Agency, acting on a report recommending approval of the CityTeam project, adopted Resolution No. 3238, authorizing the Agency to enter an acquisition and relocation agreement with CityTeam in an amount not to exceed \$11,606,000.<sup>3</sup> Among other things, the Resolution recited that the Agency sought CityTeam's downtown property for redevelopment purposes and would be required to provide the Rescue Mission with relocation assistance. The Resolution also contained a finding that "the unique circumstances of CityTeam's operations have made finding a suitable replacement site impossible unless major renovations are undertaken in order to render the new location suitable for CityTeam's use[.]"

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<sup>3</sup> This figure represents \$2,097,000 for CityTeam's downtown property and \$9,509,000 for the improvements necessary to reestablish (i.e., replace) the Rescue Mission at the new sites.

On January 28, 1991, the Agency and CityTeam signed an acquisition and relocation agreement. Among other things, the Agency agreed to pay up to a certain amount for replacement and relocation costs, which were defined as "those expenses required to render the Replacement Properties suitable for Seller's current uses as well as actual moving expenses of Seller's personal property and the personal property of Seller's clients present on the Properties at the time of the move." (Emphasis added.) The agreement further provided that relocation monies would be placed in a trust account from which CityTeam could withdraw upon certification that the withdrawal was for a valid replacement or relocation expense. Any withdrawal for an invalid purpose, such as the expansion of programs, constituted a default under the agreement.

#### Discussion

Plaintiffs contend that the Agency was only obligated to pay the fair market value of CityTeam's downtown parcels (\$2,097,000) and relocation costs amounting to no more than \$82,000. (See Gov. Code, § 7262.) They argue that the millions of dollars in additional relocation costs paid by the Agency were discretionary expenditures, and because they benefited a pervasively religious organization, in making the expenditures the Agency violated federal and state constitutional provisions guaranteeing the separation of church and state. We disagree.

It is undisputed that the Agency intended to acquire CityTeam's property for a public purpose and, in accordance with the statutory mandate, it sought to negotiate an agreement with CityTeam. (See § 7267.1, ante, fn. 2.) Since both the federal and State constitutions guarantee "just compensation" for private property that is taken for a public use (U.S. Const., 5th and 14th Amends.; Cal. Const., art. I, § 19; see also Code of Civ. Proc., § 1263.310 [imposing same requirement]), we may reasonably presume that one purpose of the negotiations between the Agency and CityTeam was to reach a mutual agreement over what would constitute "just compensation" and thereby avoid having to litigate this issue in a condemnation action. (See §§ 7267.1 and 7267.2.) Therefore, to better understand their agreement, we find it helpful to view it in light of the rules that guide the determination of "just compensation" in condemnation actions.

By statute, the measure of compensation is established by the "fair market value" of the property taken. (Code of Civ. Proc., § 1263.310; Contra Costa County Flood Control etc. Dist. v. Lone Tree Investments (1992) 7 Cal.App.4th 930, 933.) Generally, fair market value is what a willing buyer would pay to a willing seller under circumstances free from external pressure. (Code of Civ. Proc., § 1263.320, subd. (a)<sup>4</sup>.) Particularly relevant to this determination is

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<sup>4</sup> Code of Civil Procedure section 1263.320, subdivision (a), provides, "The fair market value of the property taken

market data value concerning recent sales of comparable properties. (See Evid. Code, § 816.)

Certain types of special use buildings, however, are not regularly bought and sold in the commercial market and have no greater value to ordinary buyers of real estate than the use which can be made of the land free of the structures thereon. Consequently, where there is no relevant market for such property, the fair market value is its value on the date of valuation "as determined by any method of valuation that is just and equitable." (Code of Civ. Proc., § 1263.320, subd. (b); see also Evid. Code, § 823.)

For example, in Redevelopment Agency v. First Christian Church (1983) 140 Cal.App.3d 690, the public agency instituted a condemnation action against a church. The court explained that market data on sales of churches was not generally available because they are not regularly bought and sold in the commercial market. Consequently, the court found that the cost of reproducing or replacing the church elsewhere less depreciation or obsolescence provided a just and equitable approach to establishing the fair

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is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available."



market value of the property. (Id. at p. 698; see BAJI No. 11.82<sup>5</sup>.)

Such a replacement-cost approach to valuation is reflected in the parties' acquisition and relocation agreement, which treats the Rescue Mission as a special use property, for which there is no relevant market data on comparable sales. The agreement implies a finding that "just compensation" includes compensating CityTeam for its real property and the cost of making the Rescue Mission's new location suitable to continue its present programs at existing levels. This approach was reasonably warranted by the variety of unique services provided at the Rescue Mission, especially their shelter facilities. It also properly focused compensation on the loss imposed on the CityTeam rather than on the benefit received by the Agency. (See Merced Irrigation Dist. v. Woolstenhulme (1971) 4 Cal.3d 478, 494.)<sup>6</sup>

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<sup>5</sup> This instruction permits the jury to consider, among other things, "The value of property as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance its value, less whatever depreciation or obsolescence the improvements have suffered[,]" in determining the fair market value of property subject to condemnation.

<sup>6</sup> Plaintiffs claim that the Agency did not in fact use the replacement/reproduction method of valuation, noting a statement by Bob Leininger that "comparable sales valuation [was used] for this acquisition." However, under the replacement/reproduction method of valuation, "just compensation" includes the value of the land together with the replacement/reproduction costs. (See Evid. Code, § 820.) Leininger's comment is not inconsistent with our conclusion that the agreement reflects the use of a

The agreement also reflects the Agency's prescience for in 1992 the Legislature added to the Evidence Code section 824, which provides, in relevant part, "Notwithstanding any other provision of this article, a just and equitable method of determining the value of nonprofit, special use property . . . for which there is no relevant, comparable market, is the cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit special use, together with the cost of constructing similar improvements." (Evid. Code, § 824, subd. (a).) It further provides that opinion testimony on the value of such property must be based on the "value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements." (Evid. Code, § 824, subd. (b).)<sup>7</sup>

Separate and apart from its constitutional obligation to provide "just compensation," the Agency had a statutory obligation to pay relocation expenses. (Health & Saf. Code, § 33415; § 7262.) Thus, we may reasonably presume that another important purpose of the negotiations between the

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replacement/reproduction method of valuation, in that, the total amount provided for (i.e., "just compensation") includes both the appraised value of the downtown parcels and the cost of reestablishing the Rescue Mission elsewhere.

<sup>7</sup> This section does not apply in condemnation actions commenced before January 1, 1993. (See Stats. 1992, ch. 7, § 7.) Also, we do not rely on it here as this case does not involve a condemnation proceeding.

Agency and CityTeam was to agree on the relocation costs and thereby avoid litigation on this issue.<sup>8</sup> (See § 7267.1.)

Health and Safety Code section 33415 establishes a general mandate: "An agency shall provide relocation assistance" required by [the relocation assistance statutes, §§ 7260 et seq.]. (Emphasis added.)

Section 7262 provides, in relevant part, "Whenever a program or project to be undertaken by a public entity will result in the displacement of any person, the displaced person is entitled to payment for actual moving and related expenses as the public entity determines to be reasonable and necessary, including expenses for all of the following:

[¶] (1) Actual and reasonable expenses in moving himself or herself, . . . [a] business, or . . . personal property. . . . [¶] (3) Actual and reasonable expenses in searching for a replacement business . . . , not to exceed one thousand dollars (\$1000). [¶] (4) Actual and reasonable expenses necessary to reestablish a displaced . . . nonprofit organization . . . , not to exceed ten thousand dollars (\$10,000)."<sup>9</sup>

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<sup>8</sup> One cannot obtain relocation benefits as part of the "just compensation" determined in a condemnation action; however, where such benefits have been denied, one may file a separate action, or a cross-complaint in a condemnation action, to recover them. (City of Mountain View v. Superior Court, (1975) 54 Cal.App.3d at 72, 80-84.)

<sup>9</sup> Section 7260, subdivision (b), defines "person" broadly to include "any individual, partnership, corporation, or association." It defines "displaced person" as, among other things, "[a]ny person who moves from real property" "as "a direct result of a written notice of intent to acquire or

Read together, these statutes required the Agency to determine and pay CityTeam's moving costs and reasonably necessary related expenses. The statutes impose no limit on the type of relocation assistance that may be provided. And although section 7262, subdivision (a)(4), quoted above, suggests a \$10,000 maximum on "reestablishment" assistance, section 7272.3 provides, in relevant part, "It is the intent of the Legislature . . . to establish minimum requirements for relocation assistance payments by public entities. This chapter shall not be construed to limit any other authority which a public entity may have to make other relocation assistance payments, or to make any relocation assistance payment in an amount which exceeds the maximum amount for such payment authorized by this chapter." (Emphasis added; see also Health and Saf. Code, § 33415 [containing a similar provision].)

Here, the parties' agreement implies a finding that the cost of making the Rescue Mission's new site suitable to continue its current operations and programs was a reasonably necessary related relocation expense. This implied finding mirrors the express finding in the Agency's resolution that relocation of the Rescue Mission involved

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the acquisition of other real property, in whole or in part, on which the person conducts a business . . . , for a program or project undertaken by a public entity." (§ 7260, subds. (c)(1) and (c)(2)(A).) It defines "business" as "any lawful activity, except a farm operation, conducted" primarily "by a nonprofit organization." (§ 7260, subd. (d)(3).)

"unique circumstances," that the nature of its operations made finding a suitable replacement site impossible unless major renovations were undertaken.<sup>10</sup>

We also note that the Rescue Mission provided shelter, various support services and beds to a certain number of the homeless. Health and Safety Code section 33411 requires a public agency to prepare a feasible plan for relocating persons displaced from housing facilities and nonprofit local community institutions displaced from their facilities. (Health & Saf. Code, § 33411, subds. (a) and (b).) Under such a plan, persons or families may not be displaced until there is comparably priced housing "suitable to the needs of such displaced persons" available and ready for them to occupy. (Health & Saf. Code, § 33411.1.)

The agreement here was the functional equivalent of the required relocation plan, and by reestablishing the Rescue Mission's housing and support services, the Agency satisfied its obligation to provide comparable housing suitable for the needs of the otherwise homeless residents of the Rescue Mission. Doing so also prevented CityTeam from having to reduce the level of existing services and programs for however long it might have taken to raise the capital

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<sup>10</sup> We note that section 7261 requires, among many other things, that the public entity provide relocation advisory assistance that includes measures, facilities, or services which are necessary or appropriate to "assist a person displaced from a business . . . in obtaining and becoming established in a suitable replacement location." (§ 7261, subds. (a) and (c)(5); emphasis added.)

necessary to pay for all the renovations itself. Thus, the Agency's agreement to pay for the replacement but not expansion of the Rescue Mission's facilities fully realized the purpose of the relocation assistance statutes.<sup>11</sup> (See § 7260.5)

We reject plaintiffs claim that under section 7262, the Agency was only required to pay \$82,000 in relocation costs (i.e., \$72,000 for actual moving expenses and a maximum of \$10,000 to reestablish the Rescue Mission at the new site), and that any additional amount constituted an unlawful discretionary grant to a religious organization.

As required, the Agency considered the Rescue Mission's "unique circumstances." (See fn. 11.) It implicitly found

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<sup>11</sup> Section 7260.5 provides, in relevant part, "[d]isplacement as a direct result of programs or projects undertaken by a public entity is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition." (§ 7260.5, subd. (a)(1), emphasis added.) "Relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons" and that "[m]inimizing the adverse impact of displacement is essential to maintaining the economic well-being of communities." (§ 7260.5, subds. (a)(2) and (a)(4).) "This chapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a public entity. The primary purpose of this chapter is to ensure that these person shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on these persons." (§ 7260.5, subd. (b).) "The Legislature intends [that]: [¶] (2) [u]niform procedures for the administration of relocation assistance . . . , to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances [be] accorded equal treatment under [these statutes]." (§ 7260.5, subd. (c)(2); emphasis added.)

that, up to a certain amount, the costs of renovating the new site were reasonable relocation expenses necessary to avoid undue hardship to CityTeam and its clients. Upon making this finding, the Agency became obligated to pay them. (See Health & Saf. Code, § 33415.) Thus, we agree with the trial court's conclusion that if the Agency had refused to pay the reasonable and necessary relocation costs simply because of CityTeam's religious orientation, it would have violated CityTeam's right to equal protection under the law. (Cf. Ansonia Board of Education v. Philbrook (1986) 479 U.S. 60, 71.) This is especially so in light of the statutory requirement that relocation assistance procedures be applied uniformly and Bob Leininger's uncontradicted testimony that the Agency consistently pays full relocation costs in all cases where businesses or entities are displaced.<sup>12</sup>

In sum, we find that the agreement between the Agency and CityTeam reflects a proper and reasonable understanding of the Agency's mandatory duty to pay "just compensation" for CityTeam's property and the reasonable and necessary costs of relocating the Rescue Mission to its new site.

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<sup>12</sup> In light of the uncontradicted testimony that the costs of relocating the Rescue Mission at the new site were carefully segregated between expansion and replacement costs and that the entire amount provided for in the agreement was needed to reestablish the existing Rescue Mission at the new location, we decline to engage in a line-by-line evaluation of whether each particular item of relocation expense was reasonable and necessary.

Thus, whether we view the funds provided by the Agency as constitutionally required "just compensation," statutorily required relocation assistance, or, as is probably the case, a combination of both, we conclude that their payment was mandatory and not discretionary.

As noted above, plaintiffs claim that the Agency's discretionary allocation of monies to a nonprofit religious corporation violated various federal and state constitutional provisions designed to guarantee the separation of church and state. In light of our conclusion that the Agency's allocation was mandatory, not discretionary, plaintiffs' claim on appeal must fail. Plaintiffs do not argue, nor could they, that a public entity may not make mandatory compensation and relocation payments for property it acquires from religious organizations.

#### Disposition

The judgment is affirmed.



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Wunderlich, J.

WE CONCUR:

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Premo, Acting P.J.

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Elia, J.

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