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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 86

HON. DAVID P. YAFFE, JUDGE

MARINA STRAND COLONY II.

PETITIONER,

VS.

COUNTY OF LOS ANGELES,

RESPONDENT.

NO. BS 109420

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)

) SS

COUNTY OF LOS ANGELES)

I, CYNTHIA S. CRUZ, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 8, COMPRISE A PARTIAL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON DECEMBER 22, 2008.

DATED THIS 23RD DAY OF DECEMBER, 2008.


OFFICIAL REPORTER

CSR #9095

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1 LOS ANGELES, CALIF.; MON., DECEMBER 22, 2008; A.M. SESSION
2 DEPARTMENT NO. 86 HON. DAVID P. YAFFE, JUDGE
3 APPEARANCES:

4 (THE REAL PARTIES IN INTEREST WITH THEIR
5 COUNSEL, JOSHUA L. ROSEN AND R.J. COMER,
6 ATTORNEYS AT LAW; RICHARD I. FINE, IN PROPRIA
7 PERSONA.)

8 (CYNTHIA S. CRUZ, C.S.R. 9095, OFFICIAL
9 REPORTER.)

10 (THE FOLLOWING PARTIAL PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: ALL RIGHT. I'M SOMEWHAT TROUBLED BY
14 EVIDENCE CODE SECTION 703(D) WHICH SAYS IN THE ABSENCE OF
15 OBJECTION BY A PARTY, THE JUDGE PRESIDING AT THE TRIAL OF
16 AN ACTION MAY TESTIFY IN THAT TRIAL AS A WITNESS. I DON'T
17 SEE HOW I CAN TESTIFY IN A TRIAL AS A WITNESS IN WHICH I
18 AM THE SOLE DECIDER OF FACT IF THERE IS, IN FACT, ANY
19 ISSUE IN DISPUTE WITH RESPECT -- WHICH MY CREDIBILITY TO
20 MYSELF WOULD BE A FACTOR. HOWEVER, THE FIRST PART OF THIS
21 STATUTE SAYS THAT BEFORE I MAY BE CALLED TO TESTIFY AS A
22 WITNESS, I AM TO, IN PROCEEDINGS HELD OUT OF THE PRESENCE
23 OF THE JURY, INFORM THE PARTIES OF THAT POSITION THAT I
24 HAVE ON ANY MATTER, ANY FACT OR MATTER OF FACT UPON WHICH
25 I WILL BE CALLED UPON TO TESTIFY.

26 NOW, MR. FINE HAS LISTED THE MATTERS ON WHICH
27 I'M TO BE CALLED TO TESTIFY. I DON'T THINK THERE IS ANY
28 DISPUTE AS TO ANY OF THOSE MATTERS.

19

1 I HAVE RECEIVED PAYMENTS FROM THE COUNTY. I DID
2 RECEIVE THEM WHILE I WAS HANDLING CASES TO WHICH THE
3 COUNTY WAS A PARTY. I DID NOT REPORT THEM ON THE FORM 700
4 THAT IS FILED WITH THE FEDERAL -- WITH THE FAIR POLITICAL
5 PRACTICES COMMISSION OF THE STATE OF CALIFORNIA. THEY
6 WERE REPORTED ON TWO STATEMENTS THAT I WAS ISSUED AT THE
7 END OF EACH YEAR WHICH REPORTED ALL THE PAYMENTS THAT I
8 GOT FOR -- FROM SITTING AS A JUDGE FROM BOTH THE STATE AND
9 THE COUNTY.

10 BY THE WAY, ALL PAYMENTS THAT I RECEIVED AS A
11 JUDGE ARE ON A WARRANT ISSUED BY THE COUNTY OF LOS
12 ANGELES. THE STATE REIMBURSES THE COUNTY AND THE COUNTY
13 ISSUES A WARRANT WHICH PAYS ME AND ALL OF THE OTHER
14 JUDGES.

15 MR. FINE: EXCUSE ME, YOUR HONOR. WITH ALL DUE
16 RESPECT, YOUR HONOR, THAT IS INCORRECT. THE STATE DOES
17 NOT REIMBURSE THE COUNTY OF LOS ANGELES FOR THE PAYMENTS
18 THAT THE COUNTY OF LOS ANGELES MAKES. THE COUNTY OF LOS
19 ANGELES MAKES THOSE PAYMENTS OUT OF THE COUNTY'S GENERAL
20 FUND, AND THERE IS NO REIMBURSEMENTS.

21 THE COURT: THAT'S CORRECT. THAT'S RIGHT. THE
22 COUNTY REIMBURSES -- THE STATE REIMBURSES THE COUNTY FOR
23 THE PORTION OF THE COUNTY WARRANT THAT PAYS MY SALARY
24 OTHER THAN THE MEGA FLEX BENEFITS.

25 MR. FINE: FURTHER CORRECTION. THAT IS UNTRUE. THE
26 PAYMENTS THAT YOU ARE PAID OUT OF A SPECIAL FUND, THAT IS
27 NOT A COUNTY FUND. IT IS A SPECIAL TRUST FUND. AND THE
28 PAYMENTS WHICH YOU RECEIVE WHICH ARE MEGA FLEX PAYMENTS,

1 PROFESSIONAL DEVELOPMENT PAYMENTS AND CONTRIBUTIONS TO
2 YOUR 401-K, ARE PAID OUT OF THE COUNTY'S GENERAL FUND, FOR
3 WHICH THERE'S NO REIMBURSEMENT FROM THE STATE.

4 THE COURT: MR. FINE, I SAID THE PORTION THAT
5 CONSTITUTES MY SALARY WHICH I GET IN A WARRANT FROM THE
6 COUNTY IS REIMBURSED TO THE COUNTY BY THE STATE.

7 MR. FINE: NO, I'M CORRECTING YOU, YOUR HONOR, THERE.
8 THAT IS A SPECIAL FUND, NOT A COUNTY FUND. IT'S A SPECIAL
9 TRUST FUND.

10 THE COURT: ALL RIGHT. WHATEVER.

11 NOW, IS THERE ANYTHING ELSE YOU HAVEN'T COVERED
12 THAT YOU WANT TO ASK ME ABOUT?

13 MR. FINE: YES. YOU HAVE NOT COVERED THE FACT THAT
14 YOU DID NOT HAVE ANY EMPLOYMENT CONTRACT WITH THE COUNTY.
15 IS THAT CORRECT?

16 THE COURT: CORRECT.

17 MR. FINE: AND DO YOU NOT HAVE ANY ARRANGEMENT TO
18 PROVIDE SERVICES FOR THE COUNTY?

19 THE COURT: OTHER THAN THE SERVICES THAT I PERFORM AS
20 A JUDGE PRESIDING IN THIS COURT, NO.

21 MR. FINE: OKAY. AND SERVICES THAT YOU PROVIDE AS A
22 JUDGE SITTING IN THIS COURT ARE THE SERVICES AS A
23 CONSTITUTIONAL ELECTED OFFICIAL OF THE STATE OF CALIFORNIA
24 PURSUANT TO THE CALIFORNIA CONSTITUTION, ARTICLE 16. IS
25 THAT CORRECT?

26 THE COURT: YES.

27 MR. FINE: OKAY. AND ON THE PAYMENTS THAT YOU ARE
28 RECEIVING FROM THE COUNTY ARE NOT PLACED INTO ANY -- ARE

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1 NOT CONTRIBUTIONS TO YOUR ELECTION CAMPAIGN. IS THAT
2 CORRECT?

3 THE COURT: CORRECT.

4 MR. FINE: OKAY, AND THE PAYMENTS THAT YOU ARE
5 RECEIVING FROM THE COUNTY ARE NOT A SALARY. IS THAT
6 CORRECT?

7 THE COURT: I CONSIDER THEM A SALARY, YES.

8 MR. FINE: WELL, SINCE YOU DID NOT HAVE ANY CONTRACT
9 WITH THE COUNTY FOR SERVICES AND YOU ARE NOT AN EMPLOYEE
10 OF THE COUNTY, THESE PAYMENTS ARE NOT A SALARY FROM THE
11 COUNTY, ARE THEY?

12 THE COURT: I CONSIDER THEM TO BE PART OF MY SALARY.

13 MR. FINE: BUT LEGALLY SPEAKING, YOU ARE --

14 THE COURT: I'M A WITNESS HERE NOW, MR. FINE, SO I'M
15 NOT GOING TO GIVE ANY OPINIONS O THE LEGALITIES OF THIS
16 STUFF.

17 MR. FINE: YOUR HONOR, DO YOU HAVE AN EMPLOYMENT
18 CONTRACT WITH THE COUNTY?

19 THE COURT: I ANSWERED THAT QUESTION. THE ANSWER IS
20 NO.

21 MR. FINE: OKAY. AND DO YOU HAVE ANY SERVICE
22 CONTRACT WITH THE COUNTY?

23 THE COURT: NO.

24 MR. FINE: OKAY. THE -- DO YOU KNOW -- DO YOU KNOW
25 OF ANY REASON THAT THE COUNTY IS GIVING YOU THESE PAYMENTS
26 OTHER THAN THE REASON TO INFLUENCE YOUR DECISION ON COUNTY
27 CASES?

28 MR. ROSEN: OBJECTION; CALLS FOR SPECULATION.

5/27/09

1 THE COURT: SUSTAINED.

2 MR. FINE: OKAY. YOU ARE THE -- YOU AREN'T THE JUDGE
3 HERE, YOUR HONOR. YOU CAN'T SUSTAIN YOUR OWN TESTIMONY.

4 THE COURT: WHO'S TO RULE ON THE OBJECTION, MR. FINE,
5 YOU?

6 MR. FINE: IT SHOULD BE BY ANOTHER JUDGE, YOUR HONOR.

7 THE COURT: ALL RIGHT. WHAT ELSE?

8 MR. FINE: NOW, YOUR HONOR, IN THIS LAST YEAR, OTHER
9 THAN THE CASE OF MARINA STRAND COLONY II, IS THERE ANY
10 CASE WHERE YOU'VE RULED AGAINST THE COUNTY OF LOS ANGELES?

11 THE COURT: IN THE LAST YEAR?

12 MR. FINE: YES.

13 THE COURT: I WOULD BE AMAZED IF I HADN'T RULED
14 AGAINST THE COUNTY OF LOS ANGELES WITHIN THE LAST YEAR,
15 BUT I CAN'T REMEMBER ANY PARTICULAR CASE.

16 MR. FINE: OKAY. IN THE LAST TWO YEARS, CAN YOU TELL
17 ME ANY CASE WHERE YOU'VE RULED AGAINST THE COUNTY OF LOS
18 ANGELES?

19 THE COURT: AGAINST THE COUNTY?

20 MR. FINE: AGAINST THE COUNTY OF LOS ANGELES.

21 THE COURT: WELL, I DID IN THIS CASE.

22 MR. FINE: NO, OTHER THAN THIS CASE.

23 THE COURT: OH, I'M SORRY. NO, I CAN'T REMEMBER THE
24 NAME OF ANY CASE IN -- IN THE NAME OF THE PLAINTIFF OR THE
25 -- WELL, THE NAME OF THE OTHER PARTY IN ANY CASE WHICH I
26 RULED AGAINST, BUT I'M SURE I HAVE.

27 MR. FINE: IN THE LAST THREE YEARS, CAN YOU TELL ME
28 THE NAME OF ANY CASE IN WHICH YOU'VE RULED AGAINST THE

1 COUNTY OF LOS ANGELES?

2 THE COURT: IF I CAN'T REMEMBER WITHIN THE LAST YEAR
3 AND THE LAST TWO YEARS, I CERTAINLY CAN'T REMEMBER ANY IN
4 THE LAST THREE YEARS.

5 MR. FINE: OKAY. NOW, YOUR HONOR, IN THIS PARTICULAR
6 CASE, DID YOU INVESTIGATE TO DETERMINE IN THE RECORD --
7 AND I'M NOT ASKING YOU ABOUT YOUR DECISION, I'M ASKING YOU
8 IN THIS PARTICULAR CASE, DID YOU DETERMINE -- DID YOU
9 INVESTIGATE THE RECORD TO DETERMINE IF THE MAY 15TH VOTE BY
10 THE BOARD OF SUPERVISORS INVOLVING THE E.I.R. WAS A VALID
11 VOTE IN THAT THE SUPERVISORS HAD THE AUTHORITY TO VOTE TO
12 APPROVE THE E.I.R.?

13 MR. ROSEN: OBJECTION.

14 THE COURT: NOW, YOU'RE GETTING INTO THE NATURE FOR
15 MY RULING IN THE UNDERLYING CASE HERE.

16 MR. FINE: NO, THE BASIS OF YOUR RULING IN THE
17 UNDERLYING CASE WAS THAT YOU SAID THAT THE E.I.R. HAD
18 NOT BEEN CIRCULATED DUE TO THE AMOUNT OF DIRT THAT WAS
19 SUPPOSED TO BE MOVED.

20 MR. ROSEN: OBJECTION, YOUR HONOR; LACKS FOUNDATION.
21 THAT ISSUE IS NOT PRESENTED IN THE CASE BEFORE YOU AT THE
22 TIME.

23 MR. FINE: THE -- MY QUESTION IS THAT IN LOOKING AT
24 THE RECORD IN THIS CASE --

25 THE COURT: I DON'T UNDERSTAND THE OBJECTION, SO IT'S
26 OVERRULED, BUT --

27 MR. FINE: LET ME GIVE YOU AN OFFER OF PROOF.

28 THE COURT: THIS IS NOT -- WHAT DOES THIS HAVE TO DO

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1 WITH THIS CONTEMPT PROCEEDING?

2 MR. FINE: IT HAS TO DO WITH THE FOLLOWING THING,
3 YOUR HONOR: I WILL GIVE YOU AN OFFER OF PROOF OF WHAT
4 WILL COME INTO EVIDENCE WHICH IS ALREADY BEFORE YOU FROM
5 THE DOCUMENTS, AND THAT IS THAT THE OFFER OF PROOF IS THAT
6 BOTH SUPERVISOR ANTONOVICH AND SUPERVISOR KNABE HAVE
7 RECEIVED CONTRIBUTIONS WITHIN 12 MONTHS PRIOR TO THE TIME
8 THAT THEY VOTED ON MAY 15TH, 2007, WHICH MAKES THEIR VOTE
9 ILLEGAL UNDER THE POLITICAL REFORM ACT UNDER THE
10 BREAKSTONE CASE. MY QUESTION -- AND THAT CAN BE SHOWN
11 FROM THE DOCUMENTS --

12 THE COURT: THEY HAVE RECEIVED CONTRIBUTIONS FROM
13 WHOM?

14 MR. FINE: FROM JERRY EPSTEIN, PAT EPSTEIN AND DAVID
15 A. LEVINE. ANY --

16 THE COURT: WHAT DOES ALL THIS HAVE TO DO WITH ME?

17 MR. FINE: IT HAS TO DO WITH YOU, YOUR HONOR, THAT IT
18 GOES TO THE POINT THAT IN THE RECORD OF THIS PARTICULAR
19 CASE IS THE MAY 15TH VOTE WHICH SHOWS THAT VOTE HAD FOUR
20 SUPERVISORS VOTING IN FAVOR OF THE E.I.R. AND THE E.I.R.
21 WAS THE BASIS OF THIS CASE, AND --

22 THE COURT: VOTED IN FAVOR OF THE E.I.R.?

23 MR. FINE: THAT'S CORRECT, IN FAVOR OF THE PASSAGE OF
24 THE E.I.R. AND THAT THOSE FOUR VOTES --

25 THE COURT: YOU MEAN THEY ADOPTED THE E.I.R.?

26 MR. FINE: THEY ADOPTED THE E.I.R., CORRECT, BY FOUR
27 VOTES. TWO OF THE FOUR VOTES --

28 THE COURT: THE E.I.R. I SUBSEQUENTLY HELD WAS

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1 INCORRECT.

2 MR. FINE: ONLY FOR THE REASON THAT THE AMOUNT OF
3 DIRT THAT WAS BEING TRANSPORTED HAD NOT BEEN SHOWN TO THE
4 PEOPLE. YOU DID NOT HOLD IT TO BE INSUFFICIENT WITH
5 RESPECT TO WHETHER THE ACTUAL ADOPTION OF THE VOTE WAS
6 LEGAL OR NOT. MY QUESTION TO YOU IS: DID YOU LOOK AT THE
7 RECORD TO DETERMINE WHETHER THE VOTE OF MAY 15TH WAS HELD -

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9 THE COURT: WHAT RECORD?

10 MR. FINE: THE RECORD IN THE CASE OF MARINA STRAND
11 COLONY II VERSUS THE COUNTY OF LOS ANGELES.

12 MR. ROSEN: YOUR HONOR --

13 THE COURT: I CERTAINLY INSPECTED THE ADMINISTRATIVE
14 RECORD.

15 MR. FINE: OKAY. IN THE INSPECTING THE
16 ADMINISTRATIVE RECORD, DID YOU INSPECT THE ADMINISTRATIVE
17 RECORD TO DETERMINE THE LEGALITY OF THE MAY 15TH VOTE?

18 THE COURT: I DON'T THINK -- I DOUBT IT BECAUSE I
19 DON'T THINK ANYBODY RAISED ANY ISSUE AS TO THE LEGALITY OF
20 THE MAY 15TH VOTE.

21 MR. ROSEN: IF I MAY OBJECT, YOUR HONOR?

22 MR. FINE: FINE. THAT ANSWERS MY QUESTION, YOUR
23 HONOR. I HAVE NO FURTHER QUESTIONS.

24 (THE FOREGOING PARTIAL PROCEEDINGS WERE
25 CONCLUDED.)
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