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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

VIRGINIA LORENZANA and HELEN
MERCADO-ROMERO,

Petitioners,

v.

THE DEPARTMENT OF
ADMINISTRATIVE SERVICES, THE
DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT,
AND THE STATE OF OREGON,

Respondents.

Case No. CV06050040
RESPONDENTS' REPLY IN SUPPORT OF
CROSS-MOTION FOR SUMMARY
JUDGMENT

(Oral argument requested)

Court: Judge Darling
Hearing: October 9, 2006
Time: 8:00 am

Petitioners Virginia Lorenzana and Helen Mercado-Romero assert that respondents erred by finding that Lorenzana acquired her present interest in the subject real property on April 13, 2005, for purposes of granting her relief pursuant to ORS 197.352 (Measure 37). Respondents also found that Mercado-Romero acquired her present interest on April 10, 2003, and granted relief accordingly. Petitioners do not contest respondents' Final Order as to Mercado-Romero.

The parties' cross-motions for summary judgment present the question whether substantial evidence in the record supports respondents' determination of Lorenzana's acquisition date. If the court finds that a reasonable person could make the determination respondents made, then the Final Order must be affirmed. ORS 183.484 (5) (c). Petitioners contend that respondents' view of the record was "narrow," "pinpoint," and "unreasonable." In effect, petitioners ask the court to view the evidence in the light most favorable to petitioners, contrary to the standard for judicial review in administrative cases.

1 On a Petition for Judicial Review of an order in other than a contested case, the court
2 does not weigh the evidence and make a de novo conclusion. Rather, the court evaluates all of
3 the evidence and decides whether a reasonable person could find as respondents did. In this
4 case, respondents relied on contemporaneous recorded property ownership records. Reasonable
5 persons can, and do, rely on such evidence. Thus, respondents' decision is based on substantial
6 evidence.

7 Petitioners argue that the affidavits of Lorenzana, her daughter, and her son-in-law
8 reasonably support a finding that the Mercado-Romeros held the property "in trust" for
9 Lorenzana until they conveyed the property to petitioners in 2005. Even taking the affidavits at
10 fact value, this argument misses the point. The question is not whether different findings are
11 supported by substantial evidence, but whether respondents' findings are. *Garcia v. Boise*
12 *Cascade Corp.*, 309 Or 292, 295 (1990) (substantial evidence standard does not permit the court
13 to substitute its view of the evidence).

14 Moreover, a reasonable person could find that the affidavits are insufficient to
15 demonstrate Lorenzana's intent at the time she transferred fee simple ownership unconditionally
16 to the Mercado-Romeros in 2004. Petitioners argue that the alleged trust had certain terms, but
17 the affidavits make no mention of these terms. Rather, the affidavits offer petitioners' legal
18 conclusion that the property "was held in trust." The affidavits state no contemporaneous facts
19 tending to show Lorenzana's intent. *Presbytery of Willamette v. Hammer*, 235 Or 564, 567
20 (1963) .

21 Most importantly, the record as a whole contains no contemporaneous documentation of
22 the alleged trust. *Shipe et al v. Hillman*, 206 Or 556, 563 (1955); ORS 93.020. Nor is there any
23 record evidence of contemporaneous circumstances that might lend credence to petitioners' trust
24 theory. All of petitioners' evidence concerning the alleged trust originated after the passage of
25 Measure 37.


26

1 **CERTIFICATE OF SERVICE**

2 I certify that on September 21, 2006, I served the foregoing *Respondents' Reply in*
3 *Support of Cross-Motion for Summary Judgment* upon the parties hereto by the method indicated
4 below, and addressed to the following:

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