

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CITY OF RANCHO PALOS VERDES
et al.,

Plaintiffs and Respondents,

v.

MARK J. ABRAMS,

Defendant and Appellant.

B151086

(Los Angeles County
Super. Ct. No. BC208586)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on August 20, 2002, be modified as follows:

1. In the second full paragraph of the opinion, add “Thereafter,” at the beginning of the first sentence, which will then read: “Thereafter, upon application by the city”

2. In the second full paragraph, at the end of the first sentence, add “without the permit.” The corrected sentence will end: “... any frequencies commercially without the permit.”

3. In the first full paragraph on page 5 (which begins, “On April 12, 1999, the city”), at the end of the first sentence (which ends “.... commercial purposes.”) add the phrase “without a city permit.” The corrected sentence will end: “... commercial purposes without a city permit.”

4. On page 5, in the fourth full paragraph (which begins, “On September 13, 1999, the trial court”), add the following sentence at the end of the paragraph: “Abrams filed a timely appeal from the judgment.”

5. On page 5, in the last paragraph (which begins, “Meanwhile, after the city denied”), add the following sentence at the end of the paragraph: “The city has filed an appeal to the Ninth Circuit Court of Appeals.”

6. On page 6, delete the first full sentence (“On June 12, 2001, Abrams filed ... Injunction.”) in its entirety.

7. On page 6, in the fourth paragraph (which begins, “Abrams contends that, in accordance with federal”), after the last sentence (which ends, “... allocated and assigned by the FCC.”), add the following sentence: “Because the trial court’s injunction prohibits that use, it is preempted by federal communications law, as we will discuss.”

8. On page 6, delete the last paragraph, which ends on page 7 (“The city argues that, under the antenna ordinance as we will discuss.”), in its entirety.

9. On page 8, in the second full paragraph, in the first sentence (which begins, “We conclude that the city’s”), replace “city’s permit requirement, *as applied in this case*,” with “trial court’s injunction”. The corrected sentence will begin: “We conclude that the trial court’s injunction is preempted because it conflicts”

10. On page 10, in the third full paragraph (which begins, “The city initially”), delete the third sentence and the municipal code citation that follows it (“This additional use would not have had ... considered in permit process].”) in their entirety. The fourth sentence in the paragraph (“Yet, when Abrams filed ... frequencies.”) will become the third sentence, after which the following sentence is to be inserted: “The trial court’s injunction had the same

effect.” In the last sentence of the existing paragraph (which begins, “Thus, the city’s action”) change “city’s action” to “injunction” so that the sentence begins: “Thus, the injunction “stands as an obstacle”)

11. On page 11, in the first full sentence (which begins, “In short, the city’s denial”), replace “city’s denial of a permit” with “trial court’s injunction”. The corrected sentence will read: “In short, the trial court’s injunction in this case gives rise to”

12. On page 13, in the first full paragraph, replace the first sentence (“Just as Abrams sought ... for commercial purposes.”) with: “As required by city law, Abrams had to seek a city permit to operate commercially, as must other amateur radio operators who want to use frequencies for commercial purposes.”

13. On page 13, in the second full paragraph (which begins, “Thus, under the TCA, if an amateur”), delete the last sentence (“But the city may not ... opposed to amateur.”) in its entirety.

14. On page 16, in the second full paragraph (which begins, “In sum, the FCC licensed Abrams”), in the second sentence (which begins, “The city denied a permit”), delete “without a legitimate reason”. The corrected sentence will begin: “The city denied a permit for that use, treading upon an area”

There is no change in the judgment.

Plaintiffs-respondents’ petition for rehearing is denied.

CERTIFIED FOR PUBLICATION.

SPENCER, P. J.

MALLANO, J.