

EXHIBIT C

United States District Court
Northern District of California

Before The Honorable Maxine M. Chesney

Michael Toschi, et al.,)
)
Plaintiff,)
)
vs.)
)
County of San Mateo,)
et al.,)
)
Defendant.)

No. C07-3625 MMC

San Francisco, California
Friday, June 27, 2008

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: Gearinger Law Firm
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By: Brian Gearinger, Esquire
R. Stephen M. LaRoe, Esquire

For Defendant: San Mateo County Counsel
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By: Carol Woodward, Esquire
Raymond Swope, Esquire

Campbell, Warburton, Fitzsimmons
Smith, Mendell & Pastore
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San Jose, California 95113
By: Lisa Jeong Cummins, Esquire

Reported By: Sahar McVickar, RPR, CSR No. 12963
Official Reporter, U.S. District Court
For the Northern District of California

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Friday, June 27, 2008

9:00 a.m.

P R O C E E D I N G S

THE CLERK: Calling civil case No. 07-3625,
Michael and Tracy Toschi versus the County of San Mateo.
Counsel, please state your appearances for the
record.

MR. GEARINGER: Good morning, Your Honor.
Brian Derringer and my colleague, Steven LaRoe,
for plaintiffs, Michael and Tracy Toschi.

THE COURT: Thank you.

MS. WOODWARD: Good morning.
Carol Woodward, county counsel on behalf of the
defendant, the county defendants.

THE COURT: Thank you.

MR. SWOPE: Good morning.
Raymond Swope, deputy county counsel on behalf of
defendants.

MS. CUMMINS: Lisa Cummins appearing on behalf of
defendants, Don and Rhonda Dallimonti..

THE COURT: I gather most of you got the message
that we were going to start a half hour late. Some of you
coming from farther away may not have gotten the message, so
sorry for that.

I have the motion to file an amended complaint; I
thought it was best to have you come in rather than just make

1 **MR. GEARINGER:** What I said, Your Honor, was that
2 formalized what we believed, informally, all along, our clients
3 talked with their neighbor, and we confirmed it under oath.

4 **THE COURT:** Of course, you could have pled it
5 earlier, if your client is saying it. I mean, your client
6 hasn't been hesitant to make allegations that are disputed by
7 other people. So, if Ms. Whipps had denied that she told them
8 that, they would still have information and belief, which was
9 the basis of much of this.

10 **MR. SWOPE:** But, there is a lot of discretion and
11 pragmatics that goes into the waterflow management, and that is
12 vested in Public Works.

13 **THE COURT:** Well, you may --

14 **MR. SWOPE:** And, I believe --

15 **THE COURT:** Okay, but that's a defense to this,
16 okay.

17 **MR. SWOPE:** Yes.

18 **THE COURT:** So, they may be prepared to say that
19 these people are not similarly situated. For example, if
20 Ms. Whipps moved the water off her property, it wasn't going
21 into anybody else's property to cause damage, unlike the claim,
22 here, that the water is going into someone's property and
23 causing damage. All right, so that's the ground.

24 I could see some amount of discovery being required
25 for that claim because the claim doesn't seem to be supported,

1 necessarily, by your complaint, or you can't point to where you
2 said all that earlier. So, that's kind of a new idea.

3 Equal protection is very different than you did me
4 wrong in my one instance. It brings in all kinds of other
5 concepts and how other people have been treated far beyond just
6 Ms. Whipps and this person. And so, that could change things
7 markedly, if you really want to plead that as one of your many
8 claims.

9 You know, you don't need to go to a form book and
10 find every possible cause of action that might be available,
11 but, if you are afraid you might have left a stone unturned
12 here, let alone the trees -- okay.

13 So -- but keeping in mind you have two different
14 goals. One appears to be to cover every possible theory of
15 liability and involve every possible individual who may be
16 liable thereunder and getting a fast trial and speedy
17 resolution of the problem. These have to be reconciled in some
18 way because they are in conflict. Okay.

19 Now, we talked about all these things. It isn't
20 clear to me what particular additional discovery the defendant
21 -- defendants anticipated by these changes. One is they've
22 still got to get the tree worked out, both your expert and
23 theirs; they may have to look further into equal protection and
24 not only Ms. Whipps, but other people. And also, I don't know
25 if their decision with respect to Ms. Whipps brings in all

1 kinds of other disputed issues about property runoff and
2 whether anybody was, or was not, harmed by Ms. Whipps' actions
3 or what they had reason to believe.

4 And then, you have the extra people, okay, two out,
5 two in. The County will defend, if Mr. Marelich and Mr. Costa
6 come in, just like they defended the other two people.

7 **MR. SWOPE:** That's correct, Your Honor.

8 **THE COURT:** Okay.

9 **MR. SWOPE:** But, coupled with that is the defense of
10 certain allegations. I have to ask the plaintiffs specifically
11 how, number one, they deprived the Toschis of their rights and
12 what Mr. Marelich and Mr. Costa actually did to conspire
13 against them. Now, we've already exhausted our seven hours of
14 discovery.

15 **THE COURT:** So, you'll have more.

16 **MR. SWOPE:** Thank you.

17 **THE COURT:** Yeah.

18 Now, if you cannot agree on how much more you should
19 have, or whether you should have more -- I can say that it
20 appears to me that you should have more. If somebody is not
21 only saying the following: You changed this way, no I didn't,
22 fine, then he's already said that, okay. But, if you say you
23 conspired, these people are not simply being alleged to have
24 done something wrong negligently, they are accused of
25 intentionally being in cahoots with nasty neighbors, and that

1 everybody is in it together, and it's a vast right-wing
2 conspiracy fueled by law enforcement connections.

3 Okay, now, if that's the case, that involves other
4 kinds of discovery. Okay, now, and I don't see you dropping
5 anything. I see you adding, not dropping.

6 So, now, we get to the question of let's say that
7 you might be able to add some of these people in, primarily
8 because all of you agree to push back the discovery; if you had
9 kept a tight discovery time line, that might affect the Court's
10 view as to what you should be allowed to put in, when you
11 should have figured all this out, et cetera, et cetera.

12 When you agreed to push back the experts, for
13 example, I think you were trying to save money until you could
14 get a chance to have your settlement conference with Magistrate
15 Judge Spero, that was the articulated reason. So I said, well,
16 okay, the parties have been spending a lot of money, maybe we
17 can save them some money. Okay, so I approved that. So, the
18 experts are way off.

19 Your fact discovery is still pretty far off, too.

20 **MS. WOODWARD:** Two weeks.

21 **THE COURT:** No, I think -- is that all you have?

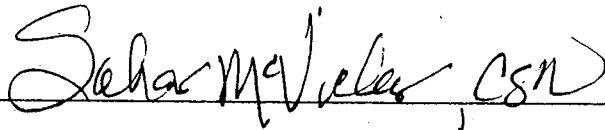
22 **MS. WOODWARD:** July 15th.

23 **THE COURT:** Oh, you only have two weeks?

24 **MS. WOODWARD:** And the summary judgment deadline is
25 August 1st, that is four weeks.

CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.



Sahar McVickar, RPR, CSR No. 12963

July 8, 2008