



FPLG: CIVIL LITIGATION

Charities in the Courtroom, Part 5: Eminent Domain & Director Squabbles

04.05.17 | Linda J. Rosenthal, JD



The two lawsuits highlighted this month provide more examples of the wide range of issues that take charities into the courtroom. The first is a San Francisco nonprofit that was damaged by an eminent domain proceeding, this case makes new precedent in California; namely, that a *nonprofit* can sue for lost goodwill – just like the well-established rule in connection with for-profit businesses. The second litigation involves an ugly dispute among charity directors, which was finally settled by a compromise agreement.

Lawsuit: Presidio Arts Foundation

The Presidio Performing Arts Foundation was created in 1998. It serves mostly low-income youth, teaching dance courses and staging performances. Since 2003, the group had leased an ideal location from the Presidio Trust. In 2011, though, Caltrans, the state department of transportation, took over that location by eminent domain in order to make way for redesigning one of the approaches to the Golden Gate Bridge.

The nonprofit was paid \$107,000 in compensation for the property loss it sustained in connection with the state's seizure and destruction of that leased building. The Foundation, though, claimed "additional, uncompensated losses in student enrollment and public appeal by having to move to a less-desirable location."

They nonprofit leased another Presidio building in September 2011, but said it was "smaller and more expensive, had less parking and was less accessible to transit." Also, they had "cancelled their 2010 summer program, including a fundraising benefit, because of the impending demolition, and lost



about half of their usual enrollment of 400 students.”

The Foundation sued, but a San Francisco Superior Court judge “refused to send the foundation’s claim of lost ‘business goodwill’ to a jury. Although an economic analyst estimated that the foundation lost \$781,000, the judge found that it had failed to establish the worth of its goodwill before the relocation.

In November 2016, a California appellate court reversed the trial court’s ruling, and in January 2017, the California Supreme Court unanimously refused to hear any further appeal.

A state appeals court by a 3-0 vote overturned that ruling, and sent back the matter to the trial court to allow a jury to hear evidence on the loss of goodwill. The appeals court wrote that the “foundation had ‘indicators of goodwill’ before the demolition, including ‘its favorable location and its sterling reputation for quality and stability.’”

In January 2017, the California Supreme Court unanimously rejected any further appeal.

The significance of this litigation is that “this is the first ruling in California to set standards to measure the loss by a nonprofit”; previously, only “for-profit companies were entitled to compensation for losses to their reputation and customer appeal caused by damage to their property.”

Lawsuit: Koret Foundation

The Koret Foundation was created in 1979 by the late Joseph Koret. By 2014, the foundation “reported assets of \$602 million and paid out \$35,370,390 in grants” that year. The original source of the assets was the Koret clothing company.

All these years later, Susan Koret, the second wife of the late founder – who had been named “chairwoman for life” in her husband’s will – was at odds with Tad Taube, the former CEO of that same Koret clothing company as well as with Richard Greene, a San Francisco attorney who had been the foundation’s former general counsel. Mrs. Koret wanted both of them booted from the Koret Foundation, and filed suit.

In this litigation, Mrs. Koret sued to “recover millions in grants she claimed were made by Mr. Taube that were outside the scope of the foundation’s mission.”

It had all of the elements of a bad novel: lots of money, second wives, business execs with big egos. In classic understatement, the news report indicated that the “trial deteriorated into character attacks between the parties.”

Fortunately, courts can often take hold of these contentious disputes and force a settlement. In September 2016, the feud was “resolved with resignations all around.” “‘The matter of who will control the Koret Foundation has been settled’, according to a statement released by two principals in the case, both of whom will be leaving the foundation’s board.”

The obligatory, conciliatory public announcement followed:



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The Koret Foundation, Susan Koret and Tad Taube, and the other Koret Foundation directors have resolved all disputes between them and dismissed all litigation. Mrs. Koret is retiring from the Koret Foundation board of directors effective today, and will be granted Emeritus status. Mr. Taube has announced that he will be retiring from the Koret Foundation board of directors on April 1, 2017. Mr. Taube will also be granted Emeritus status. The Koret Foundation thanks Mr. Taube and Mrs. Koret for their many years of service.

Now, the Foundation can get back to distributing large amounts of money out to worthy recipients and projects.