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Rancho Santa Margarita

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Judge Throws Out Mello-Roos Tax Suit Against Developer

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Even before the matter went to trial, a Vista Superior Court judge has dismissed a civil lawsuit against a San Marcos developer who was accused of not adequately disclosing the extent of Mello-Roos taxes assessed of its home buyers.

The lawsuit, scheduled for trial next month, was thrown out by Judge Ronald L. Johnson, who ruled in a summary judgment that Baldwin Building Contractors, the primary builder of the master-planned Paloma subdivision of San Marcos, did nothing wrong.

Johnson said there was nothing to try in his courtroom because Baldwin had adequately disclosed to homeowners the aspects of the special tax as accurately as possible, in compliance with state law.

Under the 10-year-old Mello-Roos law, special taxing districts are created to help pay for the impact of housing development.

The Paloma Mello-Roos district was created by Baldwin and administered by the city of San Marcos as a way to sell \$75 million in bonds to finance roads, sewers, a park, schools and other public improvements, and to help pay for additional fire and law enforcement services. The development near Palomar Community College is designed to accommodate 2,550 families and is now about 10% occupied.

The bonds will be repaid by the eventual homeowners who are assessed special Mello-Roos taxes, over and above normal property taxes. Depending on the size of their homes and lots, some residents of Paloma will pay as much as \$200 a month in added taxes, which are allowed to increase by 2% a year.

State law requires that the developers fully disclose the amount of those added taxes to future homeowners, but three homeowners said Baldwin failed to meet those requirements in their cases. They sued for fraud, breach of covenant and negligent misrepresentation and argued, among other things, that Baldwin sales agents offered faulty tax advice to home buyers.

Johnson on Thursday filed his order granting summary judgment to Baldwin, and now the company's attorneys say they will go after the three plaintiffs for more than \$200,000 in legal fees.

"The Mello-Roos statute authorizes payment of attorney fees for developers who successfully defend against challenges," said Lance Wickman, who represented Baldwin. "It forces people to be responsible in the challenges they make. Baldwin made repeated efforts to resolve this issue, but the plaintiffs insisted on pressing forward with their litigation, and the judge said their case didn't have merit."

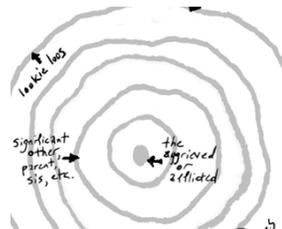
Susan Wait, who, with her husband, was one of three homeowners to sue Baldwin, said she was "very upset" by the ruling and said the judge "was in error," but she declined further comment. Her attorney, Patrick Catalano of San Francisco, did not return calls.

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