

When Sound Legal Advice Made a Difference

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In 2005, our client was a tenant within a proposed private redevelopment project called Marlton Square, a dilapidated shopping center built in the 1950s, situated on a 22-acre property, only a few miles from downtown Los Angeles and close to the then-proposed Metro light rail project. Marlton Square, also once known as Santa Barbara Plaza, sat between the renovated Baldwin Hills Crenshaw Plaza and low rent multifamily apartment buildings. Marlton Square had approximately 50 tenants, subtenants and businesses on site. The developer's plan was to acquire and assemble the property rights to the 22-acre property by voluntary negotiations, hoping to construct a mixed-use center with upscale retail shopping, single family homes, condominiums and affordable housing.

The developer arranged for private investors to fund the project and this is specifically where sound legal advice was required for our client, a small non-profit drug treatment and prevention organization called AADAP.

Voluntary Acquisitions Only

Since this was a private redevelopment project, the developer could not rely upon eminent domain to acquire property by condemnation. The now-defunct City of Los Angeles Redevelopment Agency (CRA) assisted the developer with some project planning and provided some initial funding to generate momentum for the project, but was otherwise not involved in the acquisition process. All acquisitions had to be by voluntary negotiations, but because CRA funds were involved, CRA required that the developer follow the statutory requirements for provision of notices to property owners, performing appraisals, making offers to purchase and providing relocation assistance. It was a complicated and difficult task for the developer having to comply with eminent domain law procedures, but unable to use public necessity and condemnation to backstop unsuccessful property negotiations. Undeterred, the developer proceeded to acquire 80 percent of the property rights for Marlton Square by voluntary negotiations. A truly herculean feat with only 20 percent of Marlton Square left to acquire, but the developer's failure to acquire the last 20 percent of occupants was the project's eventual downfall.

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Negotiations

AADAP had provided their services to the local community for nearly 40 years and had a well-established presence at this location. The location was very convenient for residents needing the drug abuse treatment and employment access services. As with most small businesses, AADAP needed legal help because they had no expertise with acquisitions for redevelopment and were certainly unfamiliar with the purchase and sale of real estate process. AADAP had been negotiating with the developer for several months before we were retained to provide legal assistance. They owned long-term leases for two units in the commercial buildings at Marlton Square, with the two units containing tenant owned improvements, fixtures and equipment that would need to be either purchased or relocated.

The developer offered AADAP compensation for bonus value of the leasehold interests and tenant improvements. AADAP performed their own appraisals and faced an organizational dilemma; their client base was within a mile of Marlton Square and rent could not be reasonably replicated in this vicinity. They stood to lose their entire client base and revenue if they were to move from this location. Revenues for non-profit agencies like AADAP are reimbursement-based. Reimbursement comes from local city and county public funding only after treatment services are provided. AADAP would lose their revenue stream and cessation of services likely soon thereafter. Negotiations between the developer and AADAP was amicable

but the parties could not close a gap of \$2,000,000 between the offer and demand.

A Difficult Choice

While AADAP negotiations were proceeding, the developer had opened an escrow that included the packaging of the 80 percent of properties that had committed to purchase and sale agreements that would be funded by the private investor group for this project. The developer was given a fixed deadline by the private investor and their bank of 20 days for any transactions to be included in this escrow that wished to be eligible for funding, transfer of title and payment. The developer anticipated another later escrow where the private investor group would fund and pay for the remaining 20 percent of properties to be acquired in Marlton Square development. AADAP's negotiations with the developer had stalled and AADAP was left with a difficult decision: stay firm with their valuation numbers and hold out for the full \$2,000,000 difference and wait for the second escrow, or settle now and possibly leave compensation on the table.

Sound advice from attorneys is always legal, but often it is simply practical advice. After a long conversation with AADAP, they were reminded that although their valuation opinions were performed by professionals, they were just opinions. Competing professional opinions are equally credible or discredited. Funding was going to be made available in 20 days and the proceeds were sufficient to cover expenses in the short term, while long-term solutions for AADAP operations could be planned. In this critical moment, AADAP agreed with the

attorney settlement recommendation. They settled the matter for about an even split between the demand and offer, and AADAP completed the purchase and sale agreement in time to be part of the escrow for the 80 percent of Marlton Square property transactions that funded payment.

In the End

Later, AADAP learned that the escrow closing 80 percent of the Marlton Square acquisitions was the last escrow transaction between the developer and the private funding group. Disputes arose over the delays in acquiring the final 20 percent of the properties and the property became mired in bankruptcies and claims from unpaid vendors and property owners with purchase agreements that were made but never funded. AADAP was able to use the sale proceeds to purchase several properties and continue their non-profit mission. ✪



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