

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 CAM-CARSON, LLC, a Delaware limited  
12 liability company,

13 Plaintiff,

14 v.

15 CARSON RECLAMATION AUTHORITY,  
16 a California joint powers authority; the CITY  
17 OF CARSON, CALIFORNIA, a municipal  
18 corporation; RE | SOLUTIONS, LLC., a  
19 Colorado limited liability company; the  
20 SUCCESSOR AGENCY TO THE CARSON  
REDEVELOPMENT AGENCY; and DOES  
1 through 50, inclusive,

Defendants.

Case No. 20STCV16461

Assigned to: Hon. Maureen Duffy-Lewis  
Department: 38

**FIRST AMENDED VERIFIED COMPLAINT  
FOR:**

1. **BREACH OF CONTRACT**
2. **BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR  
DEALING**
3. **NEGLIGENCE**
4. **NEGLIGENT SUPERVISION**
5. **QUANTUM MERUIT / UNJUST  
ENRICHMENT**

**DEMAND FOR JURY TRIAL**

**CAM-CARSON  
LAWUIT**

# Basic Allegations Under the Lawsuit

- CAM-Carson, LLC (CAM) [comprised of Macerich and Simon Property Group] is suing the City, the Carson Reclamation Authority (CRA), the Successor Agency, and RE Solutions (RES) (the subsurface development manager for the 157 Acres)
- The Complaint improperly alleges \$80M of damages for:
  - Breach of Contract (under the Conveyancing Agreement between CAM and the CRA)
  - Breach of Implied Covenant of Good Faith and Fair Dealing
  - Negligence
  - Negligent Supervision
  - Unjust Enrichment

# The City is not a proper party to the lawsuit and Complaint is flawed

- CAM alleges the City is an alter-ego of the CRA, claiming the two entities are the same, and thus the City is on the hook for the CRA
- The Complaint is flawed because:
  - 1) The City is not a party to the Conveyancing Agreement with CAM and has no obligations to CAM whatsoever
  - 2) The CRA is NOT in breach of the Conveyancing Agreement and has not acted negligently
  - 3) The Conveyancing Agreement has explicit limitations on CAM's rights and remedies in the event of a CRA default and none of them include any monetary damage remedies

# The City will be dismissed from the lawsuit

- We are confident the court will throw out the portions of the Complaint directed at the City – CAM's alter ego theory has been rejected in numerous CA judicial decisions
- Moreover, CAM, the City, and the CRA sought approval for the structure of the transaction which specifically shielded the City from any liability through a validation action which was approved by the LA Superior Court in Feb. 2019 – CAM is acting in bad faith
- The City will proceed with the strongest motions possible against CAM to address their bad faith and legally insupportable inclusion of the City in the Complaint, including seeking sanctions against CAM for naming the City

# Carson Reclamation Authority

- The CRA is a joint powers authority formed for the purpose of remediating the environmental conditions on the 157 Acre Site
- The Conveyancing Agreement specifically provides:  
*“The City was unwilling to put its general fund, and taxpayers at risk for environmental cleanup costs then exceeding \$100 Million. It was for these reasons the Authority was formed to take and pursue remediation of the 157 Acre Site...All of this history has been fully disclosed to Macerich and the structure of this transaction is arranged to facilitate the goals of...fully remediating the 157 Acre Site...protecting City from any liability which would arise to the land owner, and...obtaining adequate insurance to protect all parties”*
- **The purpose of the CRA is specifically to shield the City from any liability- just like the former Redevelopment Agencies**

# Primary Agreements Implicated in the Complaint

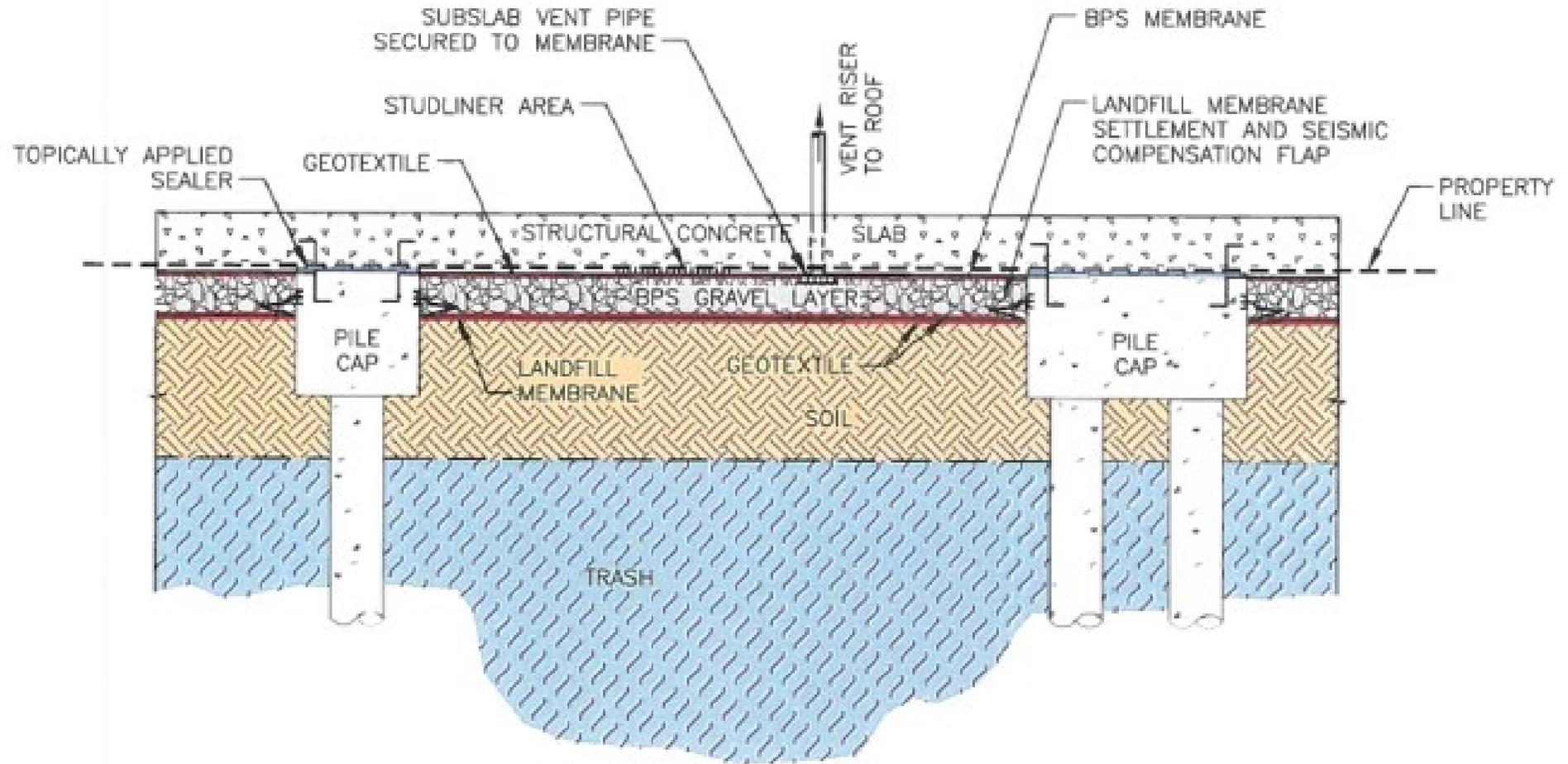
- 1) Conveyancing Agreement between the CRA and CAM
- 2) Cooperation Agreement between the City and the CRA
- 3) Development Agreement between the City and CAM
- 4) Environmental and Development Management Agreement (DMA) between the CRA and RES (CRA's development manager)

# General responsibilities under Conveyancing Agreement

- 1) CRA completes Remedial Systems and pays for them (§§ 5.2 and 6.1)
  - The remedial systems consist of:
    - a gas collection and control system,
    - groundwater extraction and treatment system, and
    - a building protection system (BPS)
- 2) CRA installs Piles, other subsurface structures and utilities to support the vertical development, CAM reimburses the CRA (§§ 5.4 and 6.3)
- 3) Upon completion, CRA transfers the surface of Cell 2 to CAM (§§ 11.2.3 and 13)
- 4) CAM develops its outlet mall (§ 8)
- 5) CRA performs all traditional city tasks such as building off-site infrastructure and even street so the City is not involved in any shape or form- CAM advances monies for this work (§§ 5.3 and 6.2)

# General responsibilities under Cooperation Agreement

- 1) CRA constructs remedial systems, site improvements, as well as traditional city tasks such as road construction, utilities, and other public infrastructure on City's behalf to shield the City from any liability – CAM must advance these costs to the CRA (§§ 3 and 4.1.3)
- 2) Following the completion of CAM's Project, City pays up to 50% of the sales taxes derived from the Project to the CRA so that the CRA can repay CAM for its prior payments made for the Site Development Improvements (§§ 4 and 5)



ADAPTED FROM ORIGINAL DRAWINGS PREPARED BY BAS

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DATE:	BY:	CHECKED:
---	V. CHEW	---
---	R. HUFF	S. SIM

SHEET TITLE:

LANDFILL MEMBRANE  
AND BUILDING PROTECTION SYSTEM -  
OCCUPIED AREAS

DATE:  
04-28-2017

SCALE:  
N.T.S.

PROJECT TITLE:

CAL COMPACT LANDFILL  
CARSON RECLAMATION AUTHORITY

DRAWING NO.  
E-1

# **CRA hired the best in the business and coordinated all aspects of design and construction with CAM on weekly basis**

- Snyder Langston (SL) (the civil engineering contractor on the Porsche Experience project) is the general civil/horizontal construction contractor for the Project
- TRC has a 50 year history of working on major engineering projects with a remediation component, has won awards for its work and has been chosen by LADWP to dismantle decommissioned power plants
- CRA, DTSC, SL, TRC, and CAM had process and weekly meetings as design and construction required close coordination

# Negotiations of the Conveyancing Agreement

- The transaction was very complicated and took more than two years to negotiate – it was finally entered into in September 2018
- **The Conveyancing Agreement does not set a hard budget or a hard deadline for completion of the work required by the CRA**, due everyone's understanding during the negotiations of the likelihood, in dealing with a landfill, that unexpected conditions would be found

# Liability controls under the Conveyancing Agreement

- The Conveyancing Agreement has detailed and express default provisions providing for notice and opportunity to cure
- **CAM's remedies under the Agreement are limited and non-monetary**
  - If the Project is completed as expected, CAM receives 50% of the sales tax revenue from the project for 25 years (§ 7)
  - If the remedial systems and site development work takes longer than expected, then CAM is entitled to extension of its obligation under the agreement and the period during which CAM receives sales tax revenue gets extended (§ 17.4.3)
  - If the CRA breaches the agreement, **CAM does not have the right to recover from any other assets of the CRA** (§§ 17.6.2, 17.6.3)

# **Macerich delayed in obtaining funding & CRA accommodated them**

Just as the Conveyancing Agreement was about to be signed, Macerich said it did not have sufficient funds to meet its obligations under the agreement (for reimbursements to the CRA & construction of its Project)

- CRA patiently waited for Macerich to find a solution
- Macerich's solution was to bring on Simon into the transaction
- Simon insisted on renegotiating many of the prior agreements between the CRA and Macerich, even agreements between the CRA and its contractors and insisted on doing the validation action where a Court ultimately agreed the City can be and is shielded from any liability
- All of this delayed the project for over 6 months

# **During negotiations Bond funding became restricted by DTSC**

- 2009 – Carson RDA issued \$69.5 million in bonds for remediation
- \$32 million of those funds were unused and available in 2017 when CRA began negotiating with Macerich for the Cell 2 Project
- While CRA was negotiating with Macerich, DTSC and CRA were negotiating the use of the remaining \$32 million bonds– ultimately DTSC required that \$19 million would be restricted for construction of remedial systems, and \$13 million was restricted for operations and maintenance in an Enterprise Fund Account
- Importantly, the CRA records prove that CAM was involved in this process and was aware of the restrictions – they cannot claim “shock”!

# Insurance programs

- The CRA and CAM obtained robust insurance coverage totaling \$1 Billion to address potential liabilities for the Site, which included the City as an additional insured:
  - Professional liability insurance covering CRA, CAM and RES
  - Specialized comprehensive liability insurance very broad in scope
  - Directors' and officers' insurance for CRA/City officials and employees

# CAM's design changes imposed millions of dollars of increased costs

- During negotiations leading up to approval of the Project, the Project design was changed by CAM to have the building utilities located underground rather than in their originally proposed location within a podium structure above-ground
- CAM was explicitly warned of additional costs associated with this change
- After the Conveyancing Agreement was executed, CAM further changed its pile design and the number of piles
- Ultimately, all of this caused Millions of dollars of additional costs to the CRA

# Unexpected site conditions caused substantial cost increases

- Installation of the remedial systems required leveling out the trash underlying Cell 2
- DTSC gave approval to a “top of trash” map prepared by Tetra Tech (the environmental contractor employed on the Site by the prior owner) that supposedly showed the elevation of the top of the trash in the landfill, which showed 19,000 cu. yds of waste excavation was required
- CRA requested of DTSC to do testing to verify the accuracy of the map
- DTSC would not allow CRA to do such testing (DTSC thought intrusive testing was unnecessary and too risky)
- CAM was involved in these discussions with DTSC
- The “top of trash” map turned out to be very wrong
- As a result, the CRA had to excavate and reconsolidate over 200,000 cu. yds of waste (180,000 cu. yds more than expected), which **increased costs by over \$12M through no fault of the CRA**

# CAM has been in the loop at all times

- CAM has been at the table throughout the process and their representatives were in weekly meetings to review the Project budget
- Because CAM representatives attended these weekly meetings, **they were aware** of the significant cost increases found in the unexpected conditions in Cell 2 and due to CAM's ever changing designs

# **CAM knew of restrictions being imposed by DTSC on the CRA's funds and escalation in costs**

- CAM's claims in the Complaint of being shocked to find out about cost increases or funding restrictions have no basis in fact
- More than 15 people were present in a meeting in which Macerich and Simon representatives admitted they knew costs were escalating due to the design change and DTSC's refusal to allow CRA to do testing to verify the "top of trash"
- Then in October 2019 – DTSC refused to release funds held in the Enterprise Account for the CRA's completion of the remedial systems, which CRA requested due to the unexpected site conditions - CAM's executives were fully informed

# Addressing the increased cost issues and CAM's blatant default

- The Conveyancing Agreement only provides that if there is a funding issue, CRA is obligated to act in good faith to seek additional funding and keep CAM informed
- When increased costs became clear, to address the increased costs quickly and avoid a cash flow issues, the CRA approached CAM and asked them to provide temporary additional funding in light of DTSC's restriction on funds to keep the schedule
- Instead, **CAM immediately stopped all payment on its contractual obligations and has failed to reimburse the CRA for over \$10 million of past due invoices owed to the CRA and more**
- When CAM refused to be a part of the solution, CRA quickly developed a two-pronged approach to obtaining additional funding to address the exacerbated cash flow issue CAM caused:
  1. Seek additional funds for completion of the Cell 2 remedial systems through the sale of the other 4 Cells on the 157 Acre Site
    - CAM reviewed proposals from the proposed developers and provided recommendations to the CRA for other developers
    - They have been kept apprised at every step and know exactly where the CRA is in this process

# Addressing the cash flow issue (prong 2)

2. Issuance of additional bonds by the Successor Agency
  - The Carson Successor Agency has available bonding capacity of over \$80M
  - The issuance has been delayed due to Oversight Board's failure to approve the bond issuance - The LA County and AFSCME representatives on the Oversight Board voted no, missing approval by 1 vote only
  - The Successor Agency appealed to the AFSCME representative to vote yes because the retail project will create jobs, to no avail
  - The Successor Agency continues to pursue the bond issuance and has sued the Oversight Board

# Nevertheless, the CRA's cash flow issue is not a default under the Conveyancing Agreement

- CRA's only obligation under the Conveyancing Agreement was to construct the remedial systems, whatever they cost
- There is no hard deadline for CRA to complete the remedial systems
- No time and cost limitations were built into the Conveyancing Agreement because everyone knew the Site is a landfill and conditions would be unpredictable – the Project Schedule under the Conveyancing Agreement was understood to fluctuate, and CAM approved of the monthly extensions to the Project Schedule

# Delay is not a default

- Delays were inevitable in the construction schedule because the Site is a landfill – that’s why the parties negotiated a flexible agreement
- The original Project Schedule projected completion of CRA’s work by the end of March 2019, but some schedule changes were needed due to CAM’s design changes and their delays when Macerich needed to find a financial partner
- **Under the Conveyancing Agreement, for every day of delay in completing the CRA’s work and conveying Cell 2 to CAM, CAM is entitled to a corresponding delay to its performance deadlines as well as a day-for-day extension to the sales tax sharing arrangement under the agreement**
- The agreement specifically limited the parties’ remedies and the parties negotiated default provisions to specifically disallow damages for delays and limited remedies

# CAM is in default

- By January 2020, CAM already owed CRA \$9.3 million in past due reimbursements and \$10 million for the street work it is obligated to advance, together with carry costs reimbursements and other soft costs they have stopped paying = the total is over \$20 million owed to the CRA
- CRA gave written notice of such default to CAM on Feb. 5, 2020 - they have made no effort to cure the default, and now owe over \$10M
- City will be counter suing CAM

# Why would CAM default?

- Since the Conveyancing Agreement was executed in Sept. 2018, Macerich's and Simon's stock prices dropped by 60% / 20% respectively, through Feb. 21, 2020, and after COVID-19 hit, their stock prices dropped by another 30% / 50%, respectively
- David Simon, Simon's CEO recently stated publicly that in dealing with COVID-19 impacts, Simon has:  
*“suspended or eliminated more than \$1 billion of capital for redevelopment and new development projects in the US and internationally. . . . Currently, its investment focus is on projects nearing completion while suspended projects will be reevaluated over time”*



# Summary of CRA work completed as of 12/1/2019

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**Overall 80% Complete / 3 months of work left**

- **Gravel Screening (100%)**
- **Gas System Installation (100%)**
- **Pile Cap Excavation (90%)**
- **Trench excavation (23%)**
- **Grading (75%)**
- **Liner installation (18%)**



# CONCLUSION

- The City Attorney's office is confident it will be successful in litigating this case on behalf of the CRA and getting the City out of the case
- CAM's remedies under the Conveyancing Agreement do not allow for damages or recovery of any assets of the CRA besides its interest in Cell 2
- Regardless of the outcome in this litigation, there is insurance in place to cover any damages