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Judge Refuses to Break Bond Between Park Place Partners

By Michael Jonathan Grinfeld

Daily Journal Staff Writer

SANTA ANA — When two partners started fighting over one of the most recognized landmarks in Orange County separating them seemed like the logical thing to do.

But despite bitter disagreements and a spate of lawsuits, an Orange County judge put a halt to any breakup after ruling on a thorny legal issue.

His decision hinged on just one line in a half-inch-thick partnership agreement created more than 15 years ago.

That contract governed the development of Irvine's Park Place, the 105-acre site that was once the national headquarters of the Fluor Corp.

While Park Place is owned by an array of general and limited partnerships, the battle is between principals of Trammel Crow Co., a Dallas-based firm that manages and develops properties nationwide, and Apollo Advisors, an investment firm headquartered in Pur-

chase, N.Y.

In 1995, through a complex series of transactions, Apollo's affiliates acquired control over Winthrop California Investors Limited Partnership, which owns a 25-percent limited interest in the 90-acre development parcel that surrounds the former Fluor headquarters buildings, an Orange County landmark along Interstate 405. The other 75 percent is held by Crow #2, a general partnership comprising Trammel's principals, who were responsible for managing and developing the property since its acquisition in 1985.

At the center of the internecine struggle was a provision that allowed one partner to buy out the other.

But Winthrop could trigger that provision only if it had a "reasonable belief" that "irreconcilable differences" had so infected the business relationship that the purposes of the partnership could not be achieved.

See Page 5 — EVIDENCE



ROBERT LEVINS / Daily Journal

LANDMARK BATTLE — "What the court saw was that you can't have a good faith belief that the partnership is failing to achieve its purposes unless you at least know what the purposes of the partnership is achieving by inspecting the project and talking to your partner," said attorney Ronald Rus, who is representing Crow #2 and Trammel Crow partners.

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The judge had to determine the legal meaning of those phrases, then decide whether the evidence supported separating the warring parties. *Crow Irvine #2 v Winthrop California Investors Limited Partnership*, CC-04296 (filed April 7, 2000).

Crow argued that its reasoned stewardship would yield an Orange County showcase development if allowed to continue, while alleging that its partners are a "cabal" of "vulture fund" investors out to score a quick buck through a quick sale. Winthrop claimed that it had a legal right to undo the partnership, asserting that differences between the partners would keep Park Place from succeeding.

Although Fluor, an international engineering and construction company, is no

longer housed there, what is under way at Park Place is a Phoenix-like rebirth of sorts, as Orange County emerges from a decade marred by recession and bankruptcy. Though strategically placed at the intersection of Jamboree and Interstate 405, the property, despite the passage of more than a decade, is just on the verge of achieving its potential.

That potential has the partners at one another's throats.

Apollo, which earned a reputation as a vulture fund by specializing in distressed assets, is the brainchild of Leon Black, former mergers and acquisitions chief of the now-defunct Drexel Burnham Lambert. The high-flying securities firm collapsed in 1990 in the middle of a host of financial scandals. Linked during the 1980s with Michael Milken, the junk-bond king convicted of securities fraud,

Black avoided any accusations of wrongdoing.

But now, Black and the limited partnerships allegedly controlled by Apollo, are accused in court papers of attempting to siphon billions of dollars out of real estate partnerships nationwide in fraudulent transactions aimed at bilking their investors. *Winthrop California Investors Limited Partnership v. Crow Winthrop Development Limited Partnership*, 812346 (filed July 27, 1999).

As one of those properties targeted by the "vulture fund network," court documents allege, Park Place's development purposefully is being undermined so it can be acquired for a discounted price and later sold for a huge profit. Estimates of Park Place's value run as high as a \$500 million.

Describing his reaction to the litigation, William H. Lane Jr., a managing director at Trammel Crow and partner in Crow #2, said, "Incredulous."

For him, the attempt to undo the partnership was a direct assault on the 15 years of effort he has devoted to navigating Park Place through some of Orange County's toughest financial times, including a recession and bankruptcy. Most of the other developments went under, he said.

"Those people in New York have never called, never visited, never wrote," Lane said, reflecting his frustration that the strides made at Park Place went unrecognized. "They're totally out of touch with what we have accomplished on the ground."

Lane intends to go forward with a 12-year master plan that will turn Park Place into what he calls "downtown Orange County." A Ritz-Carlton Hotel is under construction, and in the works are office buildings, upscale high-rise apartments and retail, restaurant and entertainment complexes.

Earlier this month, following a seven-day court trial, Judge Robert E. Thomas' critical decision made that plan a more likely reality.

He refused to allow Winthrop California Investors to invoke the buy-sell provision in the partnership, which gave one partner the right to buy out the other if either one of them developed a "good faith" belief that "irreconcilable differences" prevented the partnership from "achieving its purposes."

Thomas rejected the notion that "good faith" is a subjective standard, opting instead for an objective standard whose "hallmark" is "reasonableness." The judge then determined that the evidence failed to support contentions that irreconcilable differences hindered the

achievement of the partnership purposes.

In reaching his decision, Thomas declined to agree with a Winthrop California Investors expert, whose testimony, he said, was "based on no commercial real estate experience re construction or timing for the commencement of development of high rise commercial real estate."

Despite ongoing litigation between the parties, Thomas instead ruled that "the development of restaurants, retail commercial space, a movie theater, parking structure ... were commenced ... and that the partnership purposes were not prevented."

Ronald Rus of Irvine's Rus, Miliband & Smith, lead trial counsel for Crow #2 and the Trammel Crow partners, said the judge had to tackle an important legal issue in the case.

"What the court saw was that you can't have a good faith belief that the partnership is failing to achieve its purposes unless you at least know what the purposes of the partnership is achieving by inspecting the project and talking to your partner," Rus said. "How can you have a good faith belief about anything unless you do any of those things?"

Rus added that the partnership never had disputes until Apollo took over control of Winthrop California Investors in 1995.

"Suddenly, we have these manufactured disputes, with an entity whose principals have never even been to the project," Rus said. "They sit there in their offices in New York and try to figure out how to make money off a deal without regard to the fact that this is a very ambitious mixed-use master plan in the heart of Orange County."

"Winthrop California Investors, and its managers, are seeking to turn a quick profit to the detriment of the general partner and the project and of the city of Irvine and its citizens considering the tax base it created."

Barbara L. Moore of Boston's Edwards & Angell, who tried the case for Winthrop, declined to comment because the judge has not signed the final judgment. She also said a decision regarding an appeal would not be made until then. Co-counsel John B. Hurlbut Jr. of Costa Mesa's Rutan & Tucker also declined comment.

Meanwhile, the parties will continue to bicker despite the recent ruling and even as development of Park Place progresses. Related litigation involving a range of disputes is pending in Orange County and federal courts.