

Pacific Union College, Plaintiff

vs.

Sustainable Community Partners, LLC, Defendant

Timeline Summary Prepared January 17, 2014; updated November 12, 2014

Taken directly from Napa County Superior Court Public-Record Documents (285 pages)

2005 - 2012: Curt Johansen met John Collins in 2005. That meeting led Pacific Union College into a contractual relationship in 2006 with Johansen's financial partners, at that time Triad Communities, L.P., to develop approximately 700 acres of PUC's land with as many as 600 homes and 11 large agricultural vineyard parcels. (Note: "PUC requested SCP to include the vineyard parcels in the transaction to buffer PUC from internal pressure related to the sale of alcohol-related products and to increase the purchase price.") A use-permit development application was submitted on July 19, 2007 by Triad Development as the applicant and PUC as the land owner. The economic recession of 2007-2008 dramatically changed the financial assumptions for this project. With almost no publicity and in an out-of-court settlement, PUC paid Triad \$3 million for its entitlement work product, political influence, and the right to terminate its contractual partnership with Triad in July 2009, and proceeded July 14, 2009 as the sole applicant for their proposed project. "In 2009, John Collins and Curt Johansen worked together to influence County staff and Napa County Supervisors to resist pressures being brought by PUC opponents (including Robert Redford) to strip PUC's development rights." (Quoted from Curt Johansen deposition.) In late 2009, Heather Knight was hired as PUC President. Knight asked Johansen to consider a scaled-down project, including the same vineyard property, and PUC retained Cornish and Carey international real estate brokers to market its property via a Request for Proposals. In October of 2010, the PUC Board of Trustees voted to abandon plans for the so-called "ecovillage" and suspend all work on the associated Environmental Impact Report. In June 2011, Curt Johansen (formally front-man for Triad) became 1 of 5 principals in "Sustained Community Partners" ("SCP"). SCP began working collaboratively with PUC. In January 2012, PUC's broker informed Johansen that PUC had selected his proposal as the winning submittal. Though PUC publically announced abandonment of their "eco-village" subdivision development plan with Triad, they did not officially withdraw that application to the County until June 2012.

March 2012: Letter from PUC to SCP stating that the "College is not negotiating or seeking offers from third parties and has no intention of doing so while it is in

negotiations with you. Given the many years that you have dealt with the College, you should take comfort in knowing that the College is open and honest in its actions and communication.”

May 4, 2012 – November 2012: Save Rural Angwin launched a voter initiative primarily to resolve an unfinished General Plan Amendment Action Item concerning urban (UR) designated lands in Angwin. June 18, 2012, the Angwin General Plan Amendment Initiative was named “Measure U”. July 10, 2012, the Board of Supervisors called for Measure U to be placed on the November 2012 election ballot. The Measure did not prevail.

May 7, 2012: PUC Board of Trustees voted to affirm its 2002 and subsequent decisions to monetize select PUC assets.

May 11, 2012: PUC released a statement that three land purchase offers were being analyzed by their Board, one of which was from SCP.

June 2012: SCP/Curt Johansen retained Sheppard, Mullin, Richter & Hampton, LLP, to represent SCP in connection to negotiation and documentation of SCP’s acquisition of lands owned by PUC for the purpose of residential and vineyard development.

June 28, 2012: PUC and SCP representatives held a Purchase and Sale Agreement (PSA) kick-off meeting with respective attorneys.

July 2012: SCP informed PUC that the development capital source SCP had initially identified was not going to perform and that SCP would need to obtain alternative project financing. Periodic updates were provided September to November 2012.

July 2012 (late): SCP received a commissioned report valuing the vineyard property at between \$140,000 and \$160,000 per plantable acre, significantly lower than SCP had anticipated. Collins introduced SCP partner K. Roper to David Abreu and Abreu introduced SCP to two fully qualified prospective vineyard land purchasers – Goldin Holdings and Artemis (Chateau Latour).

January/February 2013: SCP drafted and negotiated purchase and sale agreements with Latour and Goldin. Latour and Goldin executed separate letters of intent and confidentiality agreements with SCP to purchase the entire vineyard land for \$75,750,000.00. SCP was not obligated to disclose the favorable purchase prices in the letters of intent to PUC and did not do so. The plan was to arrange simultaneous closings that would permit SCP to fund the land acquisition, install infrastructure, and meet its obligations to construct the SCP development project. At SCP’s request, PUC held separate receptions for Latour and Goldin, hosted by President Knight at her

residence, for SCP to introduce the principals of their buyers to PUC and move the process forward.

February 13, 2013: Pacific Union College (“PUC”) and Sustained Community Partners (“SCP”) entered a written Purchase and Sale Agreement (“PSA”) for the purpose of SCP to purchase certain real property of PUC and to develop the land subject to specified terms and conditions that were to be performed or satisfied prior to the close of sale (referred to as the “Cardinal Closing”). A ceremonial photo shoot was held. SCP was obligated by contract to pay an initial deposit of \$210,000.00, which they did. The contract required SCP to pay an additional \$210,000.00 as a subsequent deposit by April 15, 2013. A letter from John Collins to Curt Johansen dated April 15, 2013, denied Johansen’s request to extend the purchase agreement requirement to May 15, 2013. SCP having failed to make this 2nd payment by the April 15, 2013 date resulted in an April 16, 2013 letter from Collins terminating the PSA. When PUC notified SCP that failure to make the 2nd deposit terminated the PSA, SCP notified PUC in writing that it believed a dispute existed and that SCP was entitled to additional compensation from PUC. SCP also threatened “further legal actions” for damages.

The Purchase and Sale Agreement (PSA) provided (not a complete listing):

- Seller, at own cost and expense, to process certain Lot Line Adjustment applications.
- Purchaser to purchase post- Lot Line Adjustment lots.
- Purchaser to develop residential units within Area 1 and Area 2 (Brookside and commercial/green fields); replace or refurbish the commercial center; develop up to 4 agricultural estates; enter Business Asset Purchase Agreement with respect to the commercial center; commit to Trail Restrictions and Easements that would obligate the Purchaser to preserve specific trails and open-space and grant Purchaser the right to relocate trails as necessary in connection with Purchaser’s Project. Base Purchase price = \$39,500,000.00. Purchaser intends to receive subsidy payments from the County of Napa in connection with the development of Affordable Housing as part of Purchaser’s Project. (Note: \$8,000,000.00 in Subsidy Payments).
- Purchaser accepts the risk of obtaining the Purchaser Entitlements.
- Deed Restrictions included provide that no winery or vineyard will be operated within Area 1 or Area 2 (Brookside AH and Commercial areas) and no Farmer’s Market may occur between Friday sundown and Saturday sundown.
- Purchaser responsible for Treatment Plant Upgrades.

- Gas Station Restriction limits use to retail sale of gasoline and/or diesel for vehicles, auto maintenance services, et all gas station services, and provides a ten-year term to Purchaser to sell the gas station property.
- Includes an agreement addressing the formation of a special Utility District to serve the Property and/or some or all of the college land.
- Purchaser to construct the Brookside Replacement Units (not to exceed 45 units) and perform the Treatment Plant Upgrade and to provide for the necessary roads and trails and access of the agreement.
- Brookside AH site = Conveyed “Brookside Park Land”.
- Purchaser acknowledges that the infrastructure shall serve the entirety of the College Land, including portions retained by Seller.
- Purchaser to upgrade the Fire Station and install adjoining Public Park.
- Purchaser must integrate the Affordable Units with the market rate units.
- Purchaser constructs new commercial Center or upgrades existing Commercial Center, including a barrier that substantially screens the Commercial Center visually from Howell Mountain Rd.

February 19, 2013: PUC attorneys distributed to SCP a “PUC Land Sale Checklist” as a roadmap for completing certain tasks. Most of the listed items were not completed by April 15, 2013. In many instances, drafts which were supposed to be produced by PUC were not even provided for review.

February 27, 2013: SCP made its initial (refundable) deposit of \$210,000.00 to the escrow account.

March 1, 2013: Latour advised SCP that it was terminating its letter of intent. SCP informed PUC and the parties agreed that SCP would approach Goldin and propose that it buy the entire vineyard property (which it had earlier expressed interest in doing at a price of \$65 million).

March 15, 2013: SCP proposed to Goldin that it buy the entire vineyard property at a price of \$65 million; Goldin responded with an offer of only \$50 million.

March 18, 2013: Title report issued which reflected an \$11,710,000.00 Deed of Trust in favor of Union Bank, as well as deeds of trust in the amounts of \$2,000,000.00 in favor of PUC-related entities, each of which encumbered the property.

March 27, 2013: SCP met with PUC and proposed a revised structure whereby SCP would proceed with an expedited closing on “Parcel 7” with Goldin on May 1, 2013 at \$15,750,000.00, extend the time for PUC’s removal of unresolved contingency issues to September 1, 2013, and create an outside closing date for the remainder of the property of April 30, 2014. This approach would provide significant up-front liquidity in the amount of \$13,500,000.00 payable to PUC, validate the premium value of the land plantable to vineyard, and eliminate any time pressure to sell the remaining vineyard land at unreasonably below-market prices in the near-term, to Goldin or another buyer. PUC encouraged SCP to finalize a PSA with Goldin. (NOTE: “Parcel 7 is believed to be one of the parcels that radiate east of Mill Valley, on the “Abreu vineyard side”).)

April 11, 2013: SCP attorneys submitted a draft of the SCP-Goldin Purchase Agreement to PUC attorneys. (Note: as of this date, PUC had not prepared, nor parties agreed upon, more than 10 Ancillary Transaction Documents required to be finalized by April 15. Nor had other important issues been resolved such as finalizing the PSA’s affordable housing component, obtaining County approval to make sure the property would have an adequate water supply and wastewater disposal, both of which were Critical Path Conditions to the PSA. Also not resolved were the 3 significant encumbrances on the Property, including an \$11,710,000.00 deed of trust held by Union Bank).

April 12, 2013: Thompson (SCP attorney) and Johansen met with PUC representatives regarding the SCP-Goldin Purchase Agreement; PUC representatives responded favorably and expressed optimism. No issue was raised regarding the April 15 second deposit due from SCP. (Note: payment of the 2nd deposit of \$210,000.00 would make both deposits non-refundable; however, the deposits would be applied to the Base Purchase Price **if** closing occurred.)

April 15, 2013: PUC notified SCP 16 minutes before the close of business that the latter’s failure to make the Subsequent Deposit that day resulted in automatic termination of the PSA. PUC declined to provide more time.

April 16, 2013: John Collins sent SCP a letter purporting to terminate the PSA.

April 18, 2013: SCP proposes a Term Sheet to re-instate the February 13, 2013 PSA with specific deal point amendments.

April 24, 2013: Letter from Collins to Johansen that the Board’s Asset Committee does not accept the proposed term sheet revisions – “Time to move on. We have twice attempted something special with your organizations and have faltered. The necessary finances have not come to fund the dream.”

August 24 or 26, 2013: Letter from SCP managing partner, G. Kinsey Roper III. SCP requested an out-of-court settlement discussion the week of September 30, 2013, as a last opportunity to reach a fair and amicable resolution.

September 24, 2013: SCP sent letter to PUC that SCP believed a dispute existed between the parties and that SCP is entitled to additional monetary compensation from PUC and threatened “further legal actions”.

December 11, 2013: After the PSA was terminated, SCP sought to commence negotiations with PUC to enter a new written agreement; no new agreement was reached. SCP threatened to serve and record a *lis pendens* against the title to the property. SCP demanded money damages (\$1.5 million) as well. PUC states SCP’s rights, if any, in the underlying dispute are contractual in nature and SCP’s sole and exclusive remedy, if any, is for money damages. PUC denies SCP’s entitled to any relief whatsoever.

December 18, 2013: PUC files Case No. 26-63129 in Napa County Superior Court. Plaintiff, PUC, filed a restraining order restricting Defendant, SCP, from taking any action clouding title to the property or filing or recording any document against title to the property. PUC requests:

- judicial declaration that SCP’s failing to pay 2nd deposit in accordance with the terms of the PSA resulted in automatic and immediate termination of the PSA.
- issuance of a Temporary Restraining Order, preliminary injunction and permanent injunction restraining SCP from any action clouding title to the property.
- costs of suit and attorney’s fees incurred.
- and any further relief the court may deem proper.

January 2, 2014: Defendant SCP Peremptory Challenge to move the case from Judge Ortiz and to reassign on grounds that Ortiz is prejudiced against SCP interests or counsel.

January 7, 2014: Defendant’s opposition papers filed.

January 9, 2014: Stipulated Protective Order signed 12-30-13 by both Party law firms and so ordered January 8, 2014 to designate as “Highly Confidential” the non-public documents, testimony or information that PUC believes would create a substantial risk of serious financial or other injury if disclosed to another Party or Non-Party. This gives PUC the right to designate any “non-public” information that PUC believes is entitled to confidential treatment under applicable law.

January 13, 2014: Plaintiff's reply papers filed.

January 15 and 16, 2014: Napa County Superior Court Hearing on Case No. 26-63129.

January 17, 2013: Superior Court Judge Diane Price rules in favor of SCP. SCP can record a *Lis Pendens*, notice of pending lawsuit on 100s of acres of Angwin property which PUC argued would disrupt a prospective sale to a 3rd party. Price denied PUC's application for a preliminary injunction and rejected PUC's argument that SCP had no legal basis to file.

February 24, 2014: PUC property sale transaction to "third party" to close no later than this date. Pending. Status unknown as of July 2014.

March 7, 2014: Napa County Superior Court ordered the pending lawsuit removed from PUC's property. The Court granted PUC's motion to remove the *Lis Pendens* giving PUC the legal victory and removing any claim SCP felt they had to the land.

ADDITIONAL NOTES:

- Both PUC and SCP acknowledged in their depositions that they worked together to influence the Board of Supervisor representatives.
- Over a period of several years in connection with the PSA, SCP advanced PUC's entitlement processing and the ability to pull building permits for 191 "by-right" housing units, including more than 100 affordable homes; met and solicited key decision makers and community leaders in fall 2012 to help PUC successfully resist Measure U; designed and configured agricultural conveyance parcels to protect PUC's campus and airstrip; negotiated commercial restrictions that struck an "appropriate" balance between PUC's Adventist principles and the need for commercially viable retail operations; designed and re-configured residential and commercial parcels to 45 new units of married student housing for PUC, designed a "main street" approach to retail facilities that "would help bridge the divide between PUC and its Angwin neighbors" (from PUC's point-of-view); and guided PUC's consultants through design alternatives in preparation for a Utility District Plan of Action Agreement, an essential component for pulling residential and commercial building permits.
- PSA Escrow Instructions included a \$1 million treatment plant deposit to the escrow account by SCP.

- From PUC Land Sale Checklist and PUC/SCP Timeline of Critical Dates, “The ‘Utility District Plan of Action’ shall be entered into and the Aquifer Offset Report shall be approved by the County of Napa prior to the Cardinal Closing (but in no event later than July 30, 2013, or either party may terminate the Agreement.” Note: This was the responsibility of SCP’s attorneys; none of the documents provided any further discussion about this item or whether it had been accomplished; however, the documents state these had not been accomplished by April 11, 2013 and an alternate completion date of October 30, 2013, was cited on the Timeline.
- From PUC Land Sale Checklist and PUC/SCP Timeline of Critical Dates. “Purchaser and Seller will cooperate in order to obtain evidence from the County of Napa that the County of Napa has agreed to pay Purchaser at least \$8 million in Subsidy Payments in connection with purchaser’s project.” “Direction by SCP to County to make all Subsidy Payments to PUC (and County’s agreement) or establishment of escrow or lockbox (per Section 2.2.3 of the Agreement).” Note: This was to be accomplished by SCP and County of Napa prior to the Cardinal Closing. Again, status unknown. However, as noted above, not accomplished by April 11, 2013 and the Timeline allowed for an alternate completion date of October 30, 2013 to accomplish County approval of the Lot Line Adjustments, Subsidy Evidence, Utility District Plan of Action Agreement and Aquifer Offset Report.
- Not seen in the court documents of this summary, a statement was made by Plaintiff MPP Attorney, Barry Lee, in court on January 15, 2014, to the effect that their (PUC/MPP) review of SCP’s bank account on April 15, 2013, showed a balance of no more than \$100,000.00 on hand.
- In a PUC Board of Trustee Resolution Relating to the Sale of Real Property, signed by President Knight and dated March 2, 2012 – the College received a Letter of Intent from Terra Verde Ventures, LLC, a CA limited liability company, for the purchase and sale of real property that the Board deems non-essential...it was “Resolved” that the College proceed with negotiating and drafting a PSA with Terra Verde Ventures, LLC for the sale of the Property within the general parameters of a Letter of Intent. The Board reserved final approval of any agreement...
- In the January 13, 2014 Reply to the Order to Show Cause Regarding Preliminary Injunction prepared by MPP for PUC, MPP Attorney states “Plaintiff was not required to remove any monetary liens; rather, the liens would be paid from the sale proceeds, as typical. Thus the suggestion that Defendant

somehow would be stuck with the liens once it purchased the property and, therefore, presumably justified its refusal to make the Subsequent Deposit, is misleading.”

- In the April 18, 2013 SCP “Proposed Term Sheet”, two “deal point amendments” proposed concerned the “Hellmer parcel”: (1) Hellmer parcel cannot be conveyed until C-4 modified lot line adjustments are completed by Purchaser. Interim condition to provide leasehold interest to Purchaser from closing until conveyance after LLA completion. (2) Purchaser to assume all costs of Hellmer parcel environmental cleanup. Seller to cause Hellmer and other tenants to fully remove and vacate premises not later than June 30, 2014.

Definitions of Terminology used in Court documents:

- “*Lis Pendens*”: a notice of pending lawsuit
- “*Cardinal Closing*”: the date on which a Deed is recorded in the Official Records of Napa County
- “*Force Majeure*” delay period: the actual period of any delay encountered by the party in question resulting from acts of God, governmental delays, a default by the other party under the terms of the Agreement if the party claiming delay by reason of Force Majeure is not also in default of its obligations
- “*Estoppel*”: a legal bar that prevents a person from asserting a claim or fact that is inconsistent with a position that the person has previously taken