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SF Hotel Responds to High Court Defeat in Property Rights Case Owners Focus on Hopes for Future Plaintiffs Popular Fior d'Italia Restaurant to Open on Ground Level

SAN FRANCISCO, June 20 – Owners of the historic San Remo Hotel in San Francisco point to today's U.S. Supreme Court decision as a signal that property owners in future cases may gain improved access to the court system for Fifth Amendment claims against local regulations of private property.

In deciding *San Remo Hotel v. San Francisco*, the Supreme Court upheld a ruling by the Ninth Circuit Court of Appeals that hotel owners, brothers Tom and Robert Field, were precluded from arguing their property rights case in federal court because they had previously lost their state law claims in California courts. The California Supreme Court rejected their claims in a 4-to-3 decision in 2002.

According to Paul F. Utrecht at Zacks Utrecht & Leadbetter, the law firm representing the Fields, "Today's decision means state courts must consider federal takings claims at the same time as state law claims. This will finally make it possible for other plaintiffs to bring all their claims in one state court proceeding. The Fields were prevented from pursuing federal claims on the merits by a 'Catch-22' – state courts refused to consider their federal takings claims and federal courts rejected those claims based on state court rulings on state law issues."

Although the high court's opinion resolves the Catch-22, the decision does not help the Fields. "This is a sad day for the Fields because their federal constitutional claims will never be decided on the merits," says Utrecht. "But there is hope for other plaintiffs who challenge local property regulations as unconstitutional."

The Field brothers believe they would have prevailed on the merits of their case if it had reached a trial stage at a federal level.

San Francisco's Hotel Conversion Ordinance, a controversial law at the center of the 12-year legal battle, restricts tourist use of available rooms in hundreds of the city's smaller private hotels. Enacted 20 years after the Fields purchased the 62-room San Remo as a fully licensed tourist hotel, the law required the Fields to pay a \$567,000 fee to continue renting available rooms to tourists rather than reserving them for low-income residential housing.

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In addition, the city insisted the Fields offer lifetime leases to existing long-term tenants who had already been welcome at the hotel indefinitely. The brothers offered the leases and paid the fee under protest, but sued the city in 1993 in state and federal court for taking private property in violation of their state and federal constitutional rights.

In recent years the San Remo saga reached center stage within legal and public policy circles and captured the attention of leading property rights groups. Judicial opinions in the case are often cited in lawsuits over similar issues, and the Fields' claims in state court in 2002 triggered a frequently quoted dissent by California Supreme Court Justice Janice Brown: "Private property, already an endangered species in California, is now entirely extinct in San Francisco."

When the U.S. Supreme Court determined the case deserved review, the city was required to appear in the high court as a defendant in a takings case for only the second time in 100 years.

Organizations supporting the hotel included the U.S. Chamber of Commerce, the National Association of Realtors, the National Association of Home Builders, the Washington Legal Foundation, the Pacific Legal Foundation and the Small Property Owners of San Francisco.

Located a few blocks from Fisherman's Wharf at 2237 Mason Street in the colorful North Beach District, the fully restored three-story Victorian hotel was built by Bank of America founder A.P. Gianinni shortly after the 1906 earthquake and fire.

The Fields intend to maintain the historic décor and low room rates, popular with budget-conscious travelers. Building on the hotel's reputation for service and hospitality, they recently leased the ground floor to Fior d'Italia, America's oldest Italian restaurant.

Founded in 1886 and currently located six blocks from San Remo, the restaurant is set to move to the hotel later this year. Fior d'Italia owner Bob Larive had been searching for new space after extensive fire damage forced him to close his venerable establishment.

"The timing was just right," said Tom Field. "The hotel's bar and restaurant had been vacant while we looked for a new tenant that matched our Old World ambience. We'll be in perfect company with the restaurant, especially since its owners also challenged regulations they felt were unfair. Like us, they took their case all the way to the Supreme Court."

Larive and his partners charged the IRS with using arbitrary methods for estimating Social Security taxes they owed on customer tips to employees. U.S. v. Fior d'Italia was decided in favor of the federal government in 2002.

- Background on San Remo Hotel and its lawsuit: <http://www.sanremohotel.com>