

**Judge Benson – Law & Motion – Wednesday, May 8, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 23CV02751 Rocky Top Rentals, LLC v. Ramos, Andres, et al.

EVENT: Application for Writ of Possession (Continued from 11/29/23 and 2/28/23)

The Court will hear from counsel regarding the status of service. There is no proof of service as to either the moving papers nor the Summons and Complaint.

2. 23CV02789 Newport Federal et al v. Vina Groundwater Sustainability Agency

EVENT: Defendant Vina Groundwater Sustainability Agency's Demurrer to First Amended Complaint

Plaintiff's Request for Judicial Notice is GRANTED in part. The Court will not be accepting the truth of the statements in the documents.

Preliminarily, the Court needs to correct an error in its previous ruling on demurrer. The previous ruling indicated the reverse validation cause of action was sustained with leave to amend, however, it was the Court's intention to overrule the demurrer as to the reverse validation cause of action.

Despite this, the Court is willing to reconsider the ruling in light of *Mojave Pistachios v. Superior Court of Orange County* (2024) 99 Cal.App.5th 605.

The Court Has Found No Legal Distinction Between Extraction Based Fees and Non-Extraction Based Fees

Plaintiff attempts to distinguish *Mojave Pistachios* based on the fact *Mojave* dealt with a groundwater extraction fee and this case involves a flat per acre fee that is not based on groundwater extraction. The *Mojave* analysis focuses on Water Code § 10726.6(d):

Any person may pay a fee imposed pursuant to Section 10730, 10730.2, or 10730.4 under protest and bring an action against the governing body in the superior court to recover any money that the governing body refuses to refund. Payments made and actions brought under this section shall be made and brought in the manner provided for the payment of taxes under protest and actions for

refund of that payment in Article 2 (commencing with Section 5140) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, as applicable.

[Emphasis Added]

Water Code § 10730. Authority to impose fees

(a) A groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve. A groundwater sustainability agency shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part.

[Emphasis Added]

The Court's interpretation of § 10730 is the authority to impose fees is broad – “not limited to”. Thus, although section 10730 specifically addresses groundwater extraction, the broad language potentially could include a per acre flat fee not based on extraction imposed by a groundwater sustainability agency. As a result, the Court finds the type of fee imposed here is subject to the requirements of Water Code § 10726.6(d) and the pay first rule.

The First Amended Complaint Must Be Amended to Allege Compliance With the “Pay First” Rule

Mojave, supra, at p. 632:

During oral argument, Mojave invited us to create a new exception to the “pay first” rule, such that it would not apply for public policy reasons when a groundwater agency's sustainability plan acts inconsistently with California water law, such as by improperly determining water rights. We decline to do so. The fact that petitioner's lawsuit is based on the alleged illegality of the challenged tax does not excuse compliance with the “pay first” rule. (Flying Dutchman, *supra*, 93 Cal.App.4th at p. 1141 [“It has long been established that suits to enjoin the collection of taxes may not be maintained even though the imposition of the tax may be ‘illegal and void’”].) Also, creating such an exception here would be problematic because it would require a court to adjudicate the validity of a groundwater agency's sustainability plan and competing water rights claims at the demurrer stage. That runs contrary to what the Legislature contemplated when it enacted SGMA—namely, that groundwater sustainability plans would first be put into place, and then any dissatisfied persons could bring an adjudication action to determine water rights. (See §§ 10737–10738.)

[Emphasis Added]

The Court's interpretation of this excerpt is that the "pay first" rule acts as a gatekeeper to these actions. The fact that Plaintiffs may have independent legal grounds to challenge the tax does not permit Plaintiffs to circumvent this rule. Plaintiffs state they have timely paid the fees, however the Court finds no such allegations in the FAC.

Plaintiff is granted leave to amend to allege sufficient facts demonstrating compliance with the "pay first" rule. For clarification, the demurrer is sustained to the FAC in its entirety on this ground, as the action simply cannot proceed otherwise.

The Court disagrees with Defendant's contention that *Mojave* stands for the proposition fees can only be challenged through Water Code § 10726.6(d). The *Mojave* case does not so state, and the case did not address reverse validation in any way. *Mojave* simply stands for the proposition that the pay first rule is a pre-requisite to Plaintiffs pursuing any legal theory as a basis for challenging the imposed fee. Nor is the Court persuaded that simply because (a) and (c) of Water Code § 10726.6 provide for different limitations periods they are thus mutually exclusive legal theories.

The Court disagrees that the holding in *Andal v. City of Stockton* (2006) 137 Cal.App.4th 86 applies to the circumstances in this case. The issue in *Andal* was whether plaintiffs were required to exhaust administrative remedies. The Third District Court of appeal found in the negative because the administrative remedies were inadequate to address the Constitutional challenge made by plaintiffs. Thus, the discussion of adequate legal remedies was in the context of exhaustion of administrative remedies.

Exhaustion of administrative remedies is not an issue currently before the Court. It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680) An opinion is not authority for propositions not considered. (*Id*) Defendant has not cited an authority suggesting reverse validation under Water Code Section 10726.6(a) is precluded under these circumstances. The Court is aware of no authority suggesting Sections 10726.6(a) and 10726.6(d) are mutually exclusive.

Assuming Plaintiffs can adequately amend to allege compliance with the pay first requirement, the reverse validation cause of action appears to be properly plead for demurrer purposes.

Regarding Government Code § 53759, because the Court has interpreted Water Code § 10726.6 et seq. to encompass non-extraction fees imposed by a ground water sustainability agency, pursuant to Government Code § 53759(c) Plaintiffs cannot also pursue a claim under Government Code § 53759.

As to Plaintiffs' estoppel argument, it is unclear to the Court what Plaintiffs are precisely arguing. It appears they are arguing Defendants should be precluded from demurring to the Government Code § 53759 allegations in light of the fact their notice to the public indicates the fees were "governed by Proposition 218". While the Court appreciates how this may have been misleading, it is unclear how estoppel would apply. Estoppel requires some form of injury. Because Plaintiffs have viable legal theories under Water Code § 10726.6, it would appear that any misleading information did not in fact harm Plaintiffs.

Concerning declaratory relief, the demurrer is premised on the “pay first” rule. Assuming the FAC is adequately amended, the pleading appears to adequately state a cause of action for declaratory relief.

Regarding the Injunctive Relief Cause of Action, the demurrer is sustained without leave to amend. As Defendant correctly notes, injunctive relief is a remedy not a cause of action.

As to the fourth and fifth causes of action the demurrer is sustained without leave to amend. Because reverse validation is a viable remedy, mandamus is not appropriate.

In summary, the demurrer is sustained as to the entirety of the FAC based on the “pay first” rule. Additionally, the demurrer is sustained without leave to amend as to the 3rd, 4th and 5th cause of action on separate grounds. Plaintiffs are granted leave to amend as to the first and second causes of action. Plaintiffs shall amend within 20 days.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

3. 23CV02820 Hurtado, Allix v. United States Bakery, et al.

EVENT: Application to Appear Pro Hac Vice

Application to Appear Pro Hac Vice is GRANTED. The Court will sign the proposed order.

4. 23CV03343 Capital One Bank (USA) NA v. Goddard, Sarah A

EVENT: Plaintiff's Motion for Judgment on the Pleadings

Plaintiff's Motion for Judgment on the Pleadings as to Defendant's Answer is GRANTED WITHOUT LEAVE TO AMEND. The motion is unopposed. The Court will sign the proposed order and judgment.

5. 23CV03127 Wilson, Daedalys et al v. Park, Lisa et al.

EVENT: Cross-Defendants Daedalys Wilson dba Fulfilling Life's Purpose and Kimberly Torres dba Fulfilling Life's Purpose Motion to Set Aside Entry of Default and Motion to Set Aside Entry of Court's Order on Demurrer

Cross-Defendants Daedalys Wilson dba Fulfilling Life's Purpose and Kimberly Torres dba Fulfilling Life's Purpose Motion to Set Aside Entry of Default and Motion to Set Aside Entry of Court's Order on Demurrer is GRANTED in its entirety. All requests for sanctions are denied. The entry of default is set aside and Cross-Defendants shall file their answer within 10 days of this order.

The Court's April 15, 2024 Order is hereby stricken. The operative complaint is the First Amended Complaint filed on April 5, 2024. Defendants shall file a responsive pleading to the First Amended Complaint within 30 days of notice of this Order.

Plaintiffs/Cross Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 23CV03209 Roles, Danny et al v. Hughes, Joseph B et al.

EVENT: Demurrer to Complaint

Demurrer to Complaint is OVEERULED. Defendant shall file and serve an answer within 20 days of this order.

Preliminarily, the Court notes the moving papers (as well as the reply) introduce extrinsic matter such as the allegation that decedent lived at defendant's house and that decedent had extensive experience with guns as a hunter. None of those allegations are within the complaint and thus cannot be considered by the Court on demurrer.

As to the merits, the Court finds *Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341 distinguishable from this case, at least for purposes of demurrer. Lucas involved a suicide as the result of involuntary intoxication and whether the decedents voluntary intoxication was a

superseding cause. Whether the suicide was foreseeable from defendant's perspective was not an issue for the Court of Appeal in that case.

This case involves suicide resulting from decedent's alleged psychological condition which was allegedly known to Defendant. As framed, the Complaint raises the question of whether, based on Defendant's alleged knowledge of Plaintiff's psychological condition, decedent's suicide was foreseeable. Generally speaking, such an issue is a question of fact, see *Green v. Healthcare Services, Inc.* (2021) 68 Cal.App.5th 407 (distinguishing Lucas from the issue of foreseeability)

As a result, the defense arguments concerning lack of causation as a basis for demurrer fail. The Court notes that its findings on causation are only within the context of this demurrer.

Further, the Complaint is not uncertain.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

7. 24CV00134 In re: Mary Spaeth

EVENT: Change of name (adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. 24CV00449 In re: Grey, Mallina Delores

EVENT: Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

9. **24CV00871 In re: Dennis, Liam Patrick Romain**

EVENT: Change of Name (Adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

10. **139963 Hudson & Key SE, LLC v. Kenoyer, Kent B**

EVENT: Application for Order for Sale of Dwelling

The Court will hear from counsel. The Court notes that there is no indication that occupants of the property have been personally served or that the moving papers were posted in a conspicuous place on the property as required by CCP § 704.770(b)(2). Further, in light of the fact there has been no acknowledgment of partial satisfaction of judgment filed, the Court is curious as to when Creditor collected the \$25,000.

11. **22CV00964 Barton, John et al. v. Pillai, Josephine et al.**

EVENT: Defendant America's Best Value Inn Chico and Josephine Pillai's Motion to Compel Further Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, and Request for Sanctions

Defendant America's Best Value Inn Chico and Josephine Pillai's Motion to Compel Further Responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, and Request for Sanctions is GRANTED. Sanctions are granted in the amount of \$2,640.00. The Court will sign the proposed order.