Superior Court of California
County of San Benito

Tentative Decisions for January 31, 2024

Courtroom #3: Judge Thomas P. Breen

CU-23-00183 Natmar L.P., a California Limited Partnership, et al. v. City of Hollister, et al.

Plaintiff(s): Christine Breen
Defendant: Mark K. Kitabayashi; James McCann (City of Hollister)

On calendar for Defendant's 9-25-23 Demurrer to Plaintiff's complaint.
This case arises from Plaintiff's attempt to file a Vesting Tentative Map ("VTM") application for two properties owned by the Plaintiffs. The Defendants refused to accept the maps for filing. This suit follows.
The complaint seeks relief in the form of a writ of mandate, and for the award of monetary damages and attorney fees for the following causes of action: 1) Violation of Subdivision Map Act and City's Code of Ordinances (Title 16, Subdivisions): Administrative Mandamus (CCP §1094.5); 2) Ordinary Mandamus (CCP§1085); and 3) Damages (Inverse Condemnation/Unlawful Regulatory Taking).
11-8-23 Matter continued for further CMC and Demurrer
12-20-23 Matter continued for further CMC and Demurrer
Filings:
9-25-23 (as amended 9-28-23): Defendant demurs to all three causes of action on the basis that the causes of action fail to state facts sufficient to constitute a claim. They argue that the provisions of Article 2 of the Act, which governs the usual processing of tentative maps are inapplicable to the city's consideration of the VTMs at issue because the properties are outside of the boundaries of the city and have yet to be annexed. The City's Municipal Code states the requirements for the City's acceptance of the VTMs at issue. The decision not to act on the VTMs is within the discretion of the Defendants and is not subject to either Administrative or Ordinary Mandamus. The third cause of action fails to state a claim because the Plaintiffs have not suffered a compensable loss or taking. Moreover, Plaintiffs have not suffered a legally cognizable Inverse Condemnation or regulatory Taking, as they

****Please contact Judicial Courtroom Assistant, Wendy Guerrero, at (831) 636-4057 x129 or wguerrero@sanbenitocourt.org with any objections or concerns.**

cannot meet the factors under *Penn Central Transp. Co. v. New York City* (1978) 438 U. S. 104, 124. The court should sustain the demurrer without leave to amend.
10-26-23: Opposition to Demurrer: Defendant's demurrer should be overruled, as the City's refusal to allow the filing of the VTM violated Plaintiff's right to due process pursuant to Government Code section 66454. Defendants parsing of the relevant statute does not give it plain and commonsense meaning. Further, not allowing Plaintiffs to *file* the VTM violated the City's ordinances (Section 16.36.020(A) Hollister Code of Ordinances), which sets forth the procedure for submitting tentative maps. Additionally, the City has failed to act on the tentative maps, their only decision was to improperly deny the Plaintiff's lawful attempts to file the maps. No decision has been made by the Planning Commission pursuant to Government Code section 66454. The city has thus failed to follow its own policies and practices as established in 2013.
Reply declaration due: 11/1/23 The Plaintiffs have not provided any legally cognizable argument that they are entitled to either administrative mandamus or regular mandamus relief. Nor have the Plaintiffs stated any identifiable compensable loss in support of their third cause of action.
Evidentiary objections: Defendant's object to the Plaintiff's introduction of extraneous facts and information regarding other developments which allegedly involved properties outside the boundaries of the City of Hollister in 2013. A demurrer must be analyzed based on whether the complaint stands, as drafted, and unconnected with extraneous material is improper. (*Saxer v Morris, Inc.* (1976) 54 Cal. App. 3d 7, 18). Because a demurrer challenges defects on the face of the complaint, it can only refer to matters outside of the pleadings that are subject to judicial notice. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of Cal.* (2016) 245 al. App. 4th 821, 831.) No request for judicial notice of the additional facts referenced in the Opposition is pending. The evidentiary objections are therefore sustained. The Court denies the request that the Plaintiff be foreclosed from seeking leave to amend to include the new information. No motion seeking leave to amend the Complaint is before the court.
Legal standards: A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA. (2016*) 245 Cal App 4th 821, 834.) Because a demurrer only challenges the defects on the face of the complaint, it can only refer to matters outside the pleadings which are subject to judicial notice. (*Tenet, supra,* at 831.) For demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) Before a demurrer is filed, the demurring party must meet and confer with the other party in person or by telephone to determine if agreement can be reached to resolve the objections raised in the demurrer. (*CCP §430.41 (a).*) The meet and confer must occur at least five days before the responsive is due and a declaration stating the means of the meet and confer is required. (*CCP§43.41 (a) (3).*)
Pursuant to statute, the failure to state facts sufficient to constitute a cause of action are proper to sustain a demurrer. (CCP §¶430.10 (e); see also *Esparza v. County of Los Angeles* (2014) 224 Cal. App. 4th 452,459.) To prevail against the challenge, the complaint must sufficiently

allege 1) every element of that cause of action and 2) the Plaintiff's standing to sue. (*Shaeffer v. Califa Farms, LLC* (2020) 44 Cal. App. 5th 1125, 1134.) The facts that must be included in the complaint to properly allege a cause of action are the essential elements of that cause of action, as determined by the substantive law defining that cause of action. (*Foster v. Sexton* (2021) 61 Cal. App. 5th 998, 1018.) A plaintiff need only plead ultimate facts rather than evidentiary facts. (CW Johnson and Sons v. Carpenter (2020) 53 Cal. App. 5th 165,169.) A plaintiff however must allege the essential facts with "clearness and precision so that nothing is left to surmise," and those allegations of material fact that are left to surmise are subject to demurrer. (CCP§430.10 sub. (f); *Bernstein v. Pillar* (1950) 98 Cal. App. 2nd 441,443.) The court may sustain demurrer without leave to amend, unless there is a reasonable probability that the Plaintiff will be able to cure by amendment. (*Goodman v. Kennedy* (1976) 18 Cal. 3rd 335,349.)

Analysis: The Defendants appear to have complied with the meet and confer requirements under the statute, and the parties do not dispute this point. Their briefings focus exclusively on the interpretation of the relevant statutes and their interpretation as applied to the facts as pled in the Complaint.

The demurrer in this matter turns on interpretation of statute; specifically, Government Code section 66454. It is the Defendant's position that the court should sustain the demurrer to the First and Second causes of action because Article 2 of the Act, which governs how tentative maps are ordinarily processed is inapplicable to the consideration of the VTM at issue because the properties currently are outside of the City's boundaries. The Defendant correctly states that the municipal code as well does not include requirements that the City accept the tentative maps at issue. This, however, appears to misapprehend the issue the Plaintiff raises. The complaint itself is not premised on the Defendant's refusal to act on the VTMs (i.e. to accept or reject them), it is premised on the Defendant's refusal to permit the Plaintiffs to file the VTMs for consideration at all.

Defendant correctly notes the traditional and accepted rules of statutory interpretation. The court must first examine the statutory language, "giving it a plain and commonsense meaning." (*Sierra Club v. Sup. Ct.* (2013) 57 Cal. 4th 157, 165.) The court must also consider the context of the statutory framework, in determining the scope and purpose of the statute and harmonizing it with various sections of the enactments. (*Id; Linovitz Capo Shores, LLC. v. Cal. Coastal Comm.* (2021) 65 Cal. App. 5th 1106, 1121.) At the heart of the interpretive process is the presumption that "the Legislature knows what it said." (Bonnell *v. Medical Board* (2003)31 Cal. 4th 1255, 1261.) A court's interpretation thus should be practical, as opposed to technical, resulting in wise policy rather than mischief or absurdity. (*Hubbard v. Cal. Coastal Comm.* (2019) 38 Cao. App. 5th 119, 136.) Here, because the properties at issue are outside the City's boundaries and have yet to be annexed, the operative provision is Government Code section 66454. Neither the Plaintiff nor the Defendant dispute this point. Relevantly, the statute states:

> "Any subdivider may file with a city the tentative map of a proposed subdivision of unincorporated territory adjacent to such city. The map, in the discretion of the city, may be acted upon in the manner provided in Article 2 (commencing with Section 66452) of this chapter, except that if it is approved such approval shall be conditioned upon annexation of the property to such city within such period of time as shall be

specified by the city, and such approval shall not be effective until annexation of such property to the city has been completed. . . ."

Defendant argues that this means that the City was within its discretion to reject the VTMs and not act upon them. This may be true, but there is a distinction between rejecting the proposed map and prohibiting the filing of the map for consideration to determine whether to accept it or reject it. The language of the statute is permissive in the first sentence, clearly stating that a Plaintiffs, who are subdividers, "*may* file a tentative map of a proposed subdivision of unincorporated territory adjacent to the city." As pled in the complaint the relevant properties are currently not wholly within the borders of the city and have yet to be annexed. Thus, the situation is squarely within the ambit of situations envisioned by the legislature in this enactment. The second sentence states what the city may do after the map is filed with it:" it may act upon it in the manner provided in Article 2 . . .." In other words, the City's broad discretion as enunciated in the statute and in the other sections referenced by the Defendants is in reference to what to do with the map *after it is filed.*

In looking at the relief requested, the appropriate type of mandate is determined by the nature of the administrative action or decision under review. Generally, 'quasi-judicial' or 'adjudicative acts' (i.e. acts which involve the actual application of a rule to a specific set of existing facts) are reviewed by administrative mandamus (CCP §1094.5). Specifically, a petition under CCP §1094.5 for administrative mandamus is appropriate when a party seeks review of a "final determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in a public agency." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal. App. 4th 1464, 1482. (*California Water*).) By way of contrast, a public entity's enactment of a rule constitutes a 'quasi-legislative' act and is reviewed by ordinary (or traditional) mandate under CCP §1085. A petition for traditional mandamus is appropriate in an action "brought to attack, review, set aside, or void a quasi-legislative or ministerial determination, or a decision of a public agency. (Citations omitted). The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give notices the law requires." (*California Water, supra,* 161 Cal. App. 4th at 1483, fn. omitted.)

The determination is therefore not dependent on whether the agency is required by statute to hold an evidentiary hearing, but rather on the nature of the challenged action. (Id. at fn. 19.) Traditional (ordinary) mandamus under CCP §1085 applies to quasi-legislative decisions, defined as those involving the formulation of a rule to be applied to all future cases; whereas administrative mandamus under CCP §1094.5 applies to quasi-judicial decision, which involve the actual application of a rule to a specific set of existing facts. (*So. Cal. Cement Masons Jt. Apprenticeship Comm. V. Cal. Apprenticeship Council* (2013) 213 Cal. App. 4th 1531, 1541.)

Traditional mandamus under CCP §1085 can be used to compel the performance of a duty which is purely ministerial in character, it cannot be applied to control discretion to a matter lawfully entrusted to a commission. (*State v. Sup. Ct.* (1974) 12 Cal. 3rd 237,247 [referring to former Cal. Coastal Zone Conservation Commission].) Here, the plaintiff has alleged sufficient facts to put forward a claim that the Defendants have possibly acted outside of their

authority in prohibiting the filing of the Plaintiff's VTMs, which would circumvent the ordinary process compelling the Defendants to act to either reject or approve the VTMs. The issue, as noted previously, is not the attempt to control the exercise of discretion but rather the avoidance of the issue in its entirety. As to whether there may be cause to determine that the Planning Commission acted in a manner which was capricious or arbitrary, or contrary to public policy or which was procedurally unfair, such determination would require the Commission to have acted such that the quasi-judicial nature of the action would become subject to review. However, by not allowing the Plaintiffs to even file the VTMs for consideration, the question as to whether the action of the Planning Commission was arbitrary or capricious has yet to be reached. As such, a claim for traditional mandamus is not yet ripe for adjudication and the court may properly sustain a demurrer. (*County of Santa Clara v. Sup. Ct.* (2009) 171 Cal. App. 4th 119,131.)

As to the third cause of action, the Defendant argues that the Plaintiffs have not put forward any cognizable claim for Inverse Condemnation or Unlawful Regulatory taking. These claims require that the state or other public agency improperly takes private property for public use. (*Customer Co. v. City of Sacramento* (1995) 10 Cal. 4th 368, 377.) Such actions are limited to physically invading property which has been taken for public use, as in eminent domain and in "special and direct damage to adjacent property resulting from public improvements." (*Id.* at 379-380.) Thus, to state a cause of action there needs to be an invasion or appropriation of a valuable property right that the landowner possesses. The invasion must specifically and directly affect the landowner resulting in injury. (*Selby Realty Co. v. City of San Buenaventrua* (1973) 10 Cal. 3rd 110, 117; *Hollister Park Inv. Co. v. Goleta County Water Dist.* (1978) 82 Cal. App. 3d 290, 293-294.) A regulatory taking applies in the situations where 1) regulation compels a property owner to suffer a physical invasion of their property; and 2) where regulation on the subject property denies all economically beneficial or productive use of the land. (*Lucas v. South Carolina Coastal Council.* (1992) 505 U. S. 1003; *Hensler v. City of Glendale* (1994) 8 Cal. 4th 1, 10.) Here, the Defendant notes that the Plaintiff's claim is vague and conclusory at paragraph 58 of the Complaint. The Plaintiffs announce that the decision limits and prohibits their entitlement on the properties and prevents the Plaintiffs from developing them in a way contemplated and permitted by the City's General Plan. It is well settled that a developer does not have a right to develop its land as anticipated merely because a city's general plan projects a land use that is consistent with anticipated development. (*Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal. App. 3d 1016, 1031.) However, that decision, as noted in previous paragraphs, has yet to be made. Nor has any physical invasion to the properties been alleged, nor are the Plaintiffs, according to their pleadings, entirely foreclosed from all economically beneficial or productive use of their land.

California has a strong policy favoring liberality in amending pleadings When the complaint, liberally construed, can state a cause of action under any theory or there is a reasonable possibility that amendment could cure the defect, it is an abuse of discretion to deny leave to amend. (*Alborzi v. Univ. of Southern Cal.* (2020) 55 Cal, App. 4th 155, 183.) Denial of leave to amend is proper when no amendment could change the result, such as when, as a matter of law, the defendant has no liability to the plaintiff. (Nealy *v. County of Orange* (2020) 54 Cal. App. 4th 594, 608-609.) Denial of leave to amend is appropriate only when it conclusively appears that there is no possibility of alleging facts under which recovery can be obtained.

****Please contact Judicial Courtroom Assistant, Wendy Guerrero, at (831) 636-4057 x129 or wguerrero@sanbenitocourt.org with any objections or concerns.**

(*Cabral v. Soares* (2007) 157 Cal. App. 4th 1234, 1240.) It appears that as to causes of action 1 and 3, that there is the possibility of amendment.

Proposed Rulings:

Defendant's demurrer to the first, second, and third causes of action are sustained with leave to amend.

****Please contact Judicial Courtroom Assistant, Wendy Guerrero, at (831) 636-4057 x129 or wguerrero@sanbenitocourt.org with any objections or concerns.**