



Superior Court of California County of San Benito

Tentative Decisions for June 26, 2024

Courtroom #1: Judge J. Omar Rodriguez

8:30a.m.

CU-22-00156 Perez v. EDPO, LLC, et al.

There being no opposition, and the underlying settlement having been signed by all parties or their representatives, the court grants final approval of the proposed settlement.

10:30 a.m.

PR-23-00012 Estate of Steven Harold Bulger

The Petition for Final Distribution is APPROVED as requested.

PR-23-00018 In re Tarek Yasin

The hearing is continued to July 24, 2024, at 10:30 a.m. to allow for the completion of the investigation and report.

PR-23-00042 In re Joshua Hinsta

The hearing is continued to July 24, 2024, at 10:30 a.m. to allow for the completion of the investigation and report.

3:30 p.m.

CU-22-00247 Center for Biological Diversity and Protect San Benito County v. San Benito County

In light of the current status of Plaintiff's appeal, the court will continue to stay this matter pending the ruling of the Sixth District Court of Appeal. Oral Argument is scheduled for 7-18-24. Defendants and real parties in interest motion for attorney's fees is stayed pending the ruling of the sixth district court of appeals. The status conference and setting for hearing on the motion is continued to September 18, 2024, at 10:30 a.m.

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

The Court GRANTS the Defendants Motion to Strike as to the Third and Fourth Causes of Action, which allege Violations of Due Process and Denial of Equal Protection, respectively. Following an order sustaining a demurrer, the plaintiff may amend his or her complaint only as authorized by the court's order. (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend. (*Ibid.*) The Third and Fourth Causes of Action are unrelated to an distinct from the other causes of action that were asserted in the original Complaint. They require different analyses of the facts, have different essential elements to establish a prima facie case, and have distinct thresholds of liability. Most notably though, they are advanced under a separate body of law (federal law as opposed to state law). As such, Plaintiffs' inclusion of these causes of action without obtaining leave from the Court is improper.

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

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

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. (*Id.* 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.)

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.)

As to the First Cause of Action, Ordinary Mandamus pursuant to Code of Civil Procedure section 1085, the Demurrer is OVERRULED.

"A traditional writ of mandate will issue to 'compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station' (Code Civ. Proc., § 1085), 'where there is not a plain, speedy, and adequate remedy, in the ordinary course of law' (id., § 1086). (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 278.) 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.) The appropriate method for challenging a ministerial decision, even one involving vested rights, is traditional mandamus under CCP §1085. (*Di Genova v State Bd. of Educ.* (1955) 45 Cal.2d 255; *Poschman v Dumke* (1973) 31 Cal.App.3d 932, disapproved on other grounds in *Armistead v State Personnel Bd.* (1978) 22 Cal.3d 198, 204 n3.) A statute or an ordinance that clearly defines the course of action that a governmental body or official must take in specified circumstances and eliminates any element of discretion imposes a ministerial duty. (*Monterey Coastkeeper v Central Coast Reg'l Water Quality Control Bd., Central Coast Region* (2022) 76 Cal.App.5th 1, 18; *Ellena v Department of Ins.* (2014) 230 Cal.App.4th 198, 205. See, e.g., *Kreutzer v County of San Diego* (1984) 153 Cal.App.3d 62 (if there is mandatory duty to suspend or revoke license on conviction of specified crime, ministerial duty is involved and no hearing is necessary).)

Ministerial acts involve no judgment or discretion by the public official as to the wisdom or manner of carrying out the activity. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. (*Protecting Our Water & Env't'l Resources v County of Stanislaus* (2020) 10 Cal.5th 479, 489.) A ministerial decision involves only the use of fixed standards or objective measures, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. (*Mountain Lion Found. v Fish & Game Comm'n* (1997) 16 Cal.4th 105, 117.)

Here, the allegation is the FAC is that the City failed to allow Plaintiffs to file either of the VTMs under California Government Code section 66454, which states that “(a)ny subdivider may file with a city the tentative map of a proposed subdivision of unincorporated territory adjacent to such city.” Here, the FAC alleges that Plaintiff complied with this statute and that the City arbitrarily refused such a filing, thereby prohibiting Plaintiffs from exercising its ability as referenced in Section 66454 to file with a city the tentative map.

As to the Second Cause of Action, Administrative Mandamus pursuant to CCP section 1094.5, the Demurrer is SUSTAINED. 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*)). Here, there are no allegations of facts adduced at hearing or findings thereon for judicial review. Nor have Plaintiffs alleged that any final adjudicatory or quasi-judicial decision was made by any of the Defendants in this matter. Thus, administrative mandamus is not appropriate here, and the City's demurrer to the Second Cause of Action is sustained.

As to the Fifth Cause of Actions, the demurrer is sustained with leave to amend. Plaintiffs have not stated that they suffered a legally cognizable Inverse Condemnation or regulatory Taking, as they cannot meet the factors under *Penn Central Transp. Co. v. New York City* (1978) 438 U. S. 104, 124. Plaintiffs have failed to allege any facts demonstrating that they have suffered a legally cognizable inverse condemnation or regulatory taking. (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 377.) Such actions are limited to physical invasions of property taken for "public use" in eminent domain and special and direct damage to adjacent property resulting from public improvements. (Id at 879-380.) Accordingly, "in order to state a cause of action for inverse condemnation, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury." (*Selby Realty Co. v. City of San Buenaventura* (1973) Cal.3d 110, 117.)

As to the individual defendants, the Demurrer is SUSTAINED without leave to amend. "Where property damage results from the acts of employees, and not from a policy decision, there is no taking." (*Paterno v. State of Cal.* (1999) 74 Cal.App.4th 68, 87; see also *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 378.)

The Defendant's Demurrer is sustained with leave to amend. 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. (*Cabral v. Soares* (2007) 157 Cal. App. 4th 1234, 1240.)

PR-24-00048 In re Gertrude Hansen Trust

The Petition for Appointment of Successor Trustee is APPROVED as requested.

END OF TENTATIVE DECISIONS