

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

Court of Appeal Fourth District
FILED
OCT 21 2014
Kevin J. Lane, Clerk

DEPUTY

LINDA VISTA VILLAGE SAN DIEGO HOMEOWNERS ASSOCIATION, INC.,

Plaintiff and Appellant,

v.

TECOLOTE INVESTORS, LLC, et al.,

Defendants and Respondents.

D064741

San Diego County No. 37-2012-00085269-CU-MC-CTL

THE COURT:

Oral argument has been requested on issues arising from the trial court's ruling sustaining, without leave to amend, demurrers by Respondents Tecolote Investors, LLC, et al. (Landlord Defendants). The ruling includes a finding that the subject property lost the characterization of "Pueblo Lands" within the meaning of San Diego City Charter section 219, through numerous title transfers. (See Appellant's Appendix, 1 AA 7-11 [subject property is "located . . . on Pueblo Lands . . ."], 95-99, 6 AA 1606.)

The court requests that the parties be prepared to address, at oral argument, the following issues:

1. Proposed judicial notice on appeal

Pursuant to Evidence Code section 459, subdivision (c), before an appellate court takes judicial notice of material that is of substantial consequence to the determination of the action, when that material was not previously so noticed, the court will give each party the opportunity to respond to the proposed notice. (Evid. Code, §§ 452, subd. (d); 455, subd. (a).) In reviewing a demurrer ruling, an appellate court independently determines whether the pleadings allege facts sufficient to state a cause of action, and in doing so, may consider matters subject to judicial notice. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

In *U.S. v. 32.42 Acres of Land* (9th Cir. 2012) 683 F.3d 1030, 1034, the Court of Appeals relied on authorities establishing that when a complete taking of property pursuant to federal eminent domain occurs, it establishes new title and extinguishes previous interests not specifically excepted by the taker. (See *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130,

fn. 7 [courts may take judicial notice of the existence of court documents, along with the truth of the results reached in orders and judgments].)

The current record contains documentation demonstrating that an eminent domain taking and later transfer of the subject property occurred (described *post*), of which the trial court could have taken judicial notice. (Evid. Code, §§ 452, 459; see *Helix Land Co. v. City of San Diego* (1978) 82 Cal.App.3d 932, 937 [where demurrers were sustained without leave to amend, the court may consider other relevant matters of which the trial court could have taken notice, if relevant, as having been pleaded]; *Weil v. Barthel* (1955) 45 Cal.2d 835, 837.)

The court notes that in connection with the request for a preliminary injunction filed by Linda Vista Village San Diego HOA, Inc. (Appellant), both the Landlord Defendants and the defendant City of San Diego (the City) submitted declarations and lodged documents regarding the ownership history of the property. These lodged defense exhibits included copies of judgments from eminent domain takings by the federal government in the 1940's, and a deed accomplishing a subsequent return of the property to City ownership in the 1950's. (See Appellant's Appendix, City's documents, 3 AA 598-604, 689-702; Landlord Defendants' documents, 3 AA 725-736, 737-743, 758-766, 4 AA 935-959, 960-980, 1179-1184.)

However, the record does not clearly indicate whether the trial court was requested to take judicial notice of those recorded eminent domain judgments and related materials pertaining to the subject real property, with respect to the Landlord Defendants' concurrent demurrer proceedings. (See Appellant's Appendix, defense judicial notice requests of other documents at 1 AA 114-119, 3 AA 714-715, 6 AA 1540-1545; Appellant's judicial notice requests of other documents at 1 AA 145-146, 2 AA 388-390, 6 AA 1563-1565, 1675-1678.)

This court, on its own motion, proposes to take judicial notice of those documents in the record showing the occurrence of federal eminent domain proceedings and a later transfer concerning this property. (Evid. Code, § 459, subd. (c).) At oral argument, the parties may respond with their views on whether it is proper to take judicial notice in that manner, and on the tenor of the matter to be noticed. (Evid. Code, § 455, subd. (a).)

Specifically, do these documents demonstrate as a matter of law that a break occurred in the chain of title between periods of the City's ownership, for purposes of our required *de novo* pleadings interpretation of the language of City Charter section 219? (See Appellant's Appendix, 3 AA 598-604, 689-702, 758-766, 4 AA 935-959, 960-980, 1179-1184, 6 AA 1606.)

2. Joinder Issue

The ruling on the Landlord Defendants' demurrer was issued in connection with a ruling on Appellant's companion motion for preliminary injunction, and the minute order states that the City joined in the demurrer. However, the joinders in the file do not reflect that a specific joinder to the demurrer moving papers was requested (as opposed to joinders in opposition to the

injunction request). (See Appellant's Appendix, 1 AA 95-96, 3 AA 594, 600, 714, 755, 7 AA 1792-1794.) In view of the "cross-over issues" from the injunction request that were before the trial court, as noted in the demurrer ruling on appeal, what is the effect of the answer filed by the City, including its defense that the complaint fails to state facts sufficient to constitute a cause of action? (See Appellant's Appendix, 1 AA 83-94, 6 AA 1606; RT 33-38.)

No further briefing will be allowed at this time.

Huffman
Acting Presiding Justice

cc: All Parties