

COURT OF APPEAL, FIRST APPELLATE DISTRICT

CASE SCREENING FORM

This form should be submitted to the clerk of the Court of Appeal for transmittal to the mediation program administrator. The form will not be entered in the court file. Attach pertinent documents, e.g., any judgment, findings of fact, statement of decision, or order appealed from. Attach additional pages if necessary. Enter e-mail address.

*This form must be typed. You may find a fillable PDF form at this link:
<http://www.courts.ca.gov/documents/csscreen.pdf>*

Case Name: Hazzard v. City of Oakland, et al. Case No: A138354
Your Name: Gene Hazzard State Bar No.: N/A
Counsel for: In Pro Per

Subject Matter (Check all that apply):

☐ Attorney's Fees ☐ Family Law ☐ Personal Injury
☒ Business/Contract ☐ Insurance ☐ Probate
☐ Construction ☐ Intellectual Property ☐ Professional Negligence
☐ Employment ☐ Medical Malpractice ☒ Real Estate
☒ Other (specify): Taxpayer complaint pursuant to C.C.P. §526(a)

Number of Parties: 3* Date Notice of Appeal Filed: April 8, 2013

Appellant: Gene Hazzard Counsel: N/A (in pro per)
Firm: N/A
Address: 282 Adams Street, #6, Oakland, CA 94610
Tel: (510) 418-0510 FAX: N/A E-mail: whitewolf303@att.net

Respondent: City of Oakland Counsel: Kevin Siegel
Firm: Burke, Williams & Sorenson
Address: 1901 Harrison Street, Suite 900, Oakland, CA 94610
Tel: (510) 273-8780 FAX: (510) 839-9104 E-mail: jquinn@hansonbridgett.com
(email of Legal Assistant Heather Ehmke)

Respondent: Phil Tagami, CCIG; Daniel Letter, Prologis Counsel: Joseph Quinn
Firm: Hanson Bridgett LLP
Address: 425 Market Street, 26th Floor, San Francisco, CA 94105
Tel: (415) 777-3200 FAX: (415) 541-9366 E-mail: jquinn@hansonbridgett.com

Cross-Appellant: _____ Counsel: _____
Firm: _____
Address: _____
Tel: _____ FAX: _____ E-mail: _____

Other Parties: See Attachment.

***While multiple defendants were named in the caption, the case is brought by one plaintiff against the City of Oakland and its employees (one party) and the Master Developer of the Oakland Army Base. While defense claims that Prologis CCIG Oakland Global LLC (one of the Master Developer defendants) was never served, a copy of the First Amended Complaint naming Prologis CCIG Oakland Global LLC in the caption was served on counsel for Phil Tagami (a principal agent of this entity). Thereafter, plaintiff filed a motion for leave to file a second amended complaint, which sought to formally add this party. The motion to amend**

was denied; therefore, formal service on Prologis CCIG Oakland Global LLC would have been premature. Appellant further points out that Prologis CCIG Oakland Global LLC was not in existence until September 17, 2012 when it its application was filed by the California Secretary of State, which was filed after the initial complaint (August 3, 2012). Also, Prologis CCIG Oakland Global LLC did not have a business license in 2012, which was not discovered by appellant until after this matter was dismissed. Plaintiff intends to refile this case after determination by the appellate court to include an allegation for fraud and breach of fiduciary duty based on the City's lack of authority to execute contracts with a nonexistent entity.

Trial Court: Alameda County Superior Court Case No.: RG12642082
Trial Judge: Hon. John True, III

The trial court judgment resulted from:

☐ Jury Trial ☐ Court Trial ☐ Summary Judgment ☒ Demurrer
☐ Dismissal ☐ Nonsuit ☐ Arbitration Award ☐ Administrative Mandamus
☐ Order (specify): _____
☐ Other (specify): _____

What was the judgment?: The trial court sustained Respondents' demurrers to the First Amended Complaint without leave to amend and denied appellant Gene Hazzard's motion for leave to file a second amended complaint after tentatively granting the motion to amend and declaring the demurrers moot in light of the motion to amend. While the trial court signed proposed orders prepared by defendants (respondents), it never issued a ruling that plaintiff had no standing in the action, nor did the Court ever rule that appellant had not stated sufficient causes of action because the demurrers to the First Amended Complaint had been declared moot. (See attached.) One of the bases of this appeal surrounds the trial court's error in executing orders that were never approved as to form by plaintiff/appellant who had, in the interim, dismissed the action without prejudice prior to the court executing the proposed orders sustaining the demurrers without leave to amend (see Declaration of Heather M. Ehmke attached hereto).

What was the last settlement demand? \$ None Offer \$ None

Identify all ADR processes in this case in which you have participated (e.g., mediation, arbitration, or settlement conferences). *State the name of all judges, mediators, or other neutral parties involved:* None

Briefly state the facts of this case:

Plaintiff/Appellant Gene Hazzard filed an action against the City of Oakland and the Master Developer defendants (Phil Tagami and Daniel Letter) over the proposed development of the former Oakland Army Base. The gravamen of the complaint is fraud (not respondent's contention that the gravamen was that City cannot afford the proposed development). The First Amended Complaint clarified the basis of the complaint, in addition to correcting most of the deficiencies in the original complaint, and fully complied with the trial court's December 17, 2012 ruling to correct the deficiencies. After filing the First Amended Complaint and after receiving defendants/respondents' demurrers, plaintiff discovered additional curable mistakes had been made in the First Amended Complaint and thereafter filed a motion for leave to file a Second Amended Complaint. The trial court initially ruled in plaintiff/ appellant's favor, granting the motion to amend and declaring the defendants/respondents' demurrers moot in light of plaintiff/appellant's good faith efforts to correct the additional mistakes in the

complaint. Defendants/respondents opposed the motion to amend on the basis that “this has gone on long enough” and, after taking the matter under submission, the trial court denied plaintiff’s motion to amend and granted defendants’ demurrers to the First Amended Complaint without leave to amend. The timing of the execution of these orders is at issue in this case, as plaintiff voluntarily dismissed the action without prejudice as soon as he received the court’s ruling denying the motion to amend.

List the appellate issues that you anticipate:

Defendants/Respondents continue to deny the justiciability of plaintiff’s claims even though the trial court never ruled on defendant/respondents’ claims that the action was protected by the separation of powers doctrine. Plaintiff/appellant submitted sufficient authority which defeated this argument in his opposition to defendants’ demurrers to the First Amended Complaint, and provided ample case law supporting standing under C.C.P. §526(a) which the trial court never ruled upon either. (See transcripts of proceedings dated February 19, 2013 and March 7, 2013.

☐ This is a case of first impression.

(Specify): _____

☒ This case principally involves the validity or interpretation of a statute, ordinance, or regulation.

(Specify): While plaintiff challenged the defendants’ repeated used of the special exception in the Oakland Municipal Code which provides for the waiver of competitive bidding when the City determines it is in the “best interests of the city,” this case is about waste of public funds and fraud, and conspiracy to commit fraud by city employees in its entanglement with Master Developer defendant Phil Tagami – not a discretionary policy decision.

Related case or cases:

Name: _____ Court: _____ No. _____

What is the outcome that you seek in this case?

☐ Damages (specify): \$ _____

☒ Equitable Relief: (specify): permanent injunction against Master Developer defendants; damages in the form of restitution to the citizens of Oakland.

☐ Other (specify): _____

Describe any ongoing personal, professional, or business relationship between any of the parties to this appeal: Despite plaintiff’s assertion that the contracts are void and therefore not legally binding, the City of Oakland has an ongoing relationship with the Master Developer defendants to act as the City’s agent on the property known as the former Oakland Army Base.

Identify all persons, other than the parties, whose agreement is necessary for the settlement of this appeal and any related litigation or dispute (e.g., an insurance adjuster, spouse, or lien holder): Mark Hanson, Sr. VP of Prologis; insurance carriers for Phil Tagami and Daniel Letter.

What else should be considered in determining whether this case should be submitted to mediation? Plaintiff has offered to withdraw the appeal if the City of Oakland voids the LDDA and related contracts with Phil Tagami/CCIG and Prologis CCIG Oakland Global LLC and selects an alternative developer with financial viability and guarantor and/or the immediate reimbursement and proof of financial capacity by Master Developer for all costs unlawfully expended by the City for development of this project.