

APR 08 2013

CLERK OF THE SUPERIOR COURT
By PILIPINO TUNGOHAN
Deputy

Gene Hazzard
282 Adams Street, Unit #6
Oakland, CA 94610
(510) 418-0501

PLAINTIFF, IN PROPRIA PERSONA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

GENE HAZZARD, Oakland citizen and
resident taxpayer, City of Oakland; and all
similarly situated residents and taxpayers
of the City of Oakland,

Appellant,

v.

CITY OF OAKLAND; ALL MEMBERS OF
THE OAKLAND CITY COUNCIL: COUNCIL
PRESIDENT LARRY REID, NANCY NADEL,
JANE BRUNNER, REBECCA KAPLAN, PAT
KERNIGHAN, LIBBY SCHAAF, IGNACIO DE
LA FUENTE, DESLEY BROOKS; MAYOR
JEAN QUAN; DEANNA SANTANA, CITY
ADMINISTRATOR; FRED BLACKWELL,
ASSISTANT CITY ADMINISTRATOR;
FORMER COMMUNITY AND ECONOMIC
DEVELOPMENT DIRECTORS DAN
LINDHEIM AND WALTER COHEN;
FORMER OBRA DIRECTOR ALIZA GALLO,
OAB PROJECT MANAGER PAT CASHMAN;
REDEVELOPMENT DIRECTOR GREGORY
HUNTER; OAB PROJECT MANAGER AL
AULETTA; PHIL TAGAMI, CALIFORNIA
CAPITAL & INVESTMENT GROUP (CCIG)
(formerly known as CALIFORNIA CAPITAL
GROUP (CCG); DANIEL LETTER, PROLOGIS,
LP (formerly known as AMB PROPERTY
CORPORATION); PROLOGIS CCIG
OAKLAND GLOBAL, LLC, and Does 1-100.

Respondents.

Case No. RG12642082

**NOTICE OF APPEAL; ELECTION TO
PROCEED UNDER RULE 8.124,
CALIFORNIA RULES OF COURT;
DESIGNATION OF REPORTER'S
TRANSCRIPT WITH SUBSTITUTION OF
CERTIFIED TRANSCRIPT**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 Plaintiff GENE HAZZARD appeals from the Notice of Entry of Judgment entered March
3 28, 2013. This Notice of Appeal is filed simultaneously with a Notice Designating the Record on
4 Appeal as set forth herein.

5 Appellant elects to proceed under the provisions of Rule 8.124 of the California Rules of
6 Court.

7 Appellant designates for inclusion in the Reporter's Transcript the hearing on Motion for
8 Leave to File a Second Amended Complaint held on March 7, 2013, in Department 20 reported by
9 Doriann Renaud, C.S.R. A certified transcript of these proceedings is provided with this notice
10 and substituted for the deposit of the cost of the transcript. (See Cal rules of Court Rule
11 8.139(b)(2).
12

13 Appellant further designates for inclusion in the Reporter's Transcript the hearing on
14 Motion for Leave to File a Second Amended Complaint held on February 19, 2013, in Department
15 20 reported by Christine Bedard, C.S.R. A certified transcript of these proceedings is provided
16 with this notice and substituted for the deposit of the cost of the transcript. (See Cal rules of Court
17 Rule 8.139(b)(2).
18

19 Date: April 8, 2013

20 

21 GENE HAZZARD
22 Plaintiff *in propria persona*
23
24
25
26

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3 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
4 IN AND FOR THE COUNTY OF ALAMEDA
5 BEFORE THE HONORABLE JOHN M. TRUE III, JUDGE
6 DEPARTMENT 512

7 ---o0o---

8 GENE HAZZARD, et al.,
9 Plaintiffs,
10 vs.
11 CITY OF OAKLAND, et al.,
12 Defendants.
13 _____/

No. RG12642082

DECLARATION OF
MARIA L. BECERRA
CSR #10848
(Representative
of The Court
Reporters LLC)

14
15
16 I, MARIA L. BECERRA, Certified Shorthand Reporter,
17 and as a representative of THE COURT REPORTERS LLC, declare
18 that after a thorough search of our records, no deposit is
19 required in the above-entitled matter. Transcripts for
20 2/19/13 and 3/7/13 were previously ordered and paid for.
21

22
23 Maria L. Becerra

24 Maria L. Becerra, CSR #10848

4-1-13

25 Date
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
BEFORE THE HONORABLE JOHN M. TRUE, III, JUDGE
DEPARTMENT NO. 23

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GENE HAZZARD, Resident
taxpayer, City of Oakland,
California, et al,

Plaintiff,

vs.

No. RG12642082

CITY OF OAKLAND; ALL MEMBERS OF
THE OAKLAND CITY COUNCIL
(COUNCIL PRESIDENT LARRY REID,
NANCY NADEL, JANE BRUNNER,
REBECCA KAPLAN, PAT KERNIGHAN,
LIBBY SCHAAF, IGNACIO DE LA
FUENTE, DESLEY BROOKS); MAYOR
JEAN QUAN; DEANNA SANTANA, CITY
ADMINISTRATOR; FRED BLACKWELL,
ASSISTANT CITY ADMINISTRATOR;
FORMER COMMUNITY AND ECONOMIC
DEVELOPMENT DIRECTORS DAN
LINDHEIM AND WALTER COHEN;
FORMER OBRA DIRECTOR ALIZA
GALLO, OAB PROJECT MANAGER PAT
CASHMAN; REDEVELOPMENT DIRECTOR
GREGORY HUNTER; OAK PROJECT
MANAGER AL AULETTA; PHIL
TAGAMI, CCG/GGIG MASTER
DEVELOPER, DANIEL LETTER
AMB/PROLOGIS MASTER DEVELOPER,
et al,

Defendants.

COUNTY ADMINISTRATION BUILDING
OAKLAND, CALIFORNIA
REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY, MARCH 7, 2013

Reported by:
Doriann Renaud
CSR#9772

THE COURT REPORTERS LLC
(925) 922-2321

f0968844-b106-4398-917e-884e3f7acaff

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:

GENE HAZZARD,
In pro per

FOR THE DEFENDANTS:

WILLIAM ADAMS,
Attorney at Law

KEVIN D. SIEGEL,
Attorney at Law

1 THURSDAY, MARCH 7, 2013

AFTERNOON SESSION

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: Gene Hazzard versus City of Oakland, et al.
4 And this matter is being reported by Doriann Renaud. Docket No.
5 RG12642082. This is on this afternoon for several purposes.

6 Appearances, please, from my left to my right.

7 MR. HAZZARD: Good afternoon, Your Honor. Gene Hazzard for
8 plaintiff.

9 MR. ADAMS: Good afternoon, Your Honor. William Adams
10 appearing on behalf of defendants Letter and Tagami.

11 MR. SIEGEL: Good afternoon, Your Honor. Kevin Siegel for
12 the City and the City defendants.

13 THE COURT: All right. Good afternoon to all of you. I've
14 issued tentative rulings as to all three lines.

15 Apparently, Mr. Hazzard has been given leave to file yet
16 another complaint and demurrers have been filed. And my
17 tentative ruling has been contested by the defendants who feel
18 that, if I may summarize, this has gone on long enough. There's
19 no cause of action that the plaintiff has stated or will be able
20 to state and we should put an end to this.

21 Mr. Adams, anything you want to add?

22 MR. ADAMS: I would, Your Honor. In notifying the Court of
23 our intention to contest the tentative ruling on the
24 determination to grant leave to file a 2nd Amended Complaint.
25 We took the step of citing the Court to the Foxborough v. Van
26 Atta case, which stands for the proposition that although the
27 Court is afforded great discretion in making a determination to
28 amend pleadings, the Court also has the discretion to look at

1 the substantive pleadings and determine whether or not the
2 proposed amendment would state in fact a viable cause of action.
3 And if the Court were to determine that a -- and the amendment
4 would be futile, then it is equally within the discretion of the
5 Court to deny a motion for leave to amend on that basis.

6 Now, Mr. Hazzard sought initially leave to amend his
7 complaint. He then subsequently on the 28th of February
8 submitted yet another iteration of a proposed amended complaint.
9 Five minutes ago I was handed with a third proposed amended
10 complaint. So at a minimum, it's unclear to me which iteration
11 Mr. Hazzard --

12 THE COURT: Well, we're dealing with the 2nd Amended
13 Complaint. My clerk told me Mr. Hazzard brought something in
14 today. I have not allowed it to be filed. I don't intend to
15 allow it to be filed.

16 MR. ADAMS: I believe it has been filed, Your Honor.

17 THE COURT: Well, then it will be stricken.

18 MR. ADAMS: In any event, Mr. Hazzard in his motion before
19 the Court, had actually invited the Court at page six, line ten
20 to review the substance of his proposed amendment. And we would
21 ask the Court to take him up on his invitation. And we submit,
22 Your Honor, that a review of any of the now five iterations of
23 his complaint would be deficient as a matter of law on the issue
24 of separation of powers. We briefed that issue extensively in
25 two demurrers, Your Honor, and reduced it to its essence.

26 Mr. Hazzard would have this Court substitute its judgment
27 for the discretionary powers of the City of Oakland in making a
28 selection of a developer for the Oakland Army Base.

1 Now, that is a violation of the core separation of powers.
2 It would be an intrusion upon the discretionary authority of the
3 City. I would also point out that Mr. Hazzard had his day. The
4 City and its City Counsel had a public hearing on this. Mr.
5 Hazzard attended. The City had its day. Mr. Hazzard had his
6 say. And unsatisfied with the outcome of that, he filed this
7 lawsuit in order to get you to get his way. And I would submit,
8 Your Honor, that's simply impermissible.

9 THE COURT: Well, that's what you said the first time and
10 that's what I understood you to say and that candidly is what I
11 understand the law to be. And that's what you're saying now.

12 So my understanding is that at some point due process for
13 the pleading party, the plaintiff ends. Due process has been
14 given. He's had an opportunity to, several opportunities to
15 plead causes of action that have legal validity and he's failed
16 to do that. And so implicit in what you're saying here: Why
17 should I give you yet another opportunity?

18 MR. ADAMS: That's correct, Your Honor. There is one other
19 point that I would like to make and that is --

20 THE COURT: Yes.

21 MR. ADAMS: Your Honor, this case has been extance since
22 last August. And the existence of the lawsuit itself has served
23 as fodder in collateral public hearings for Mr. Hazzard to
24 castigate my client in public forums and that has gone on for
25 months and months and months.

26 THE COURT: Well, of course, he has that right under the
27 First Amendment.

28 MR. ADAMS: Certainly. But he's --

1 THE COURT: The question that I have in front of me is is
2 should this case be kept alive any longer?

3 MR. ADAMS: Correct.

4 THE COURT: But whatever he might be using it for in public
5 is up to you not to me.

6 MR. ADAMS: To dignify those allegations, Your Honor, by
7 the mere existence of this lawsuit is what we take offense to
8 and that's why we believe it's time to bring this matter to an
9 end and resolve it.

10 THE COURT: Mr. Siegel.

11 MR. SIEGEL: I concur completely. And the point I would
12 add is I understand obviously the Court is always inclined to
13 grant leave to amend because they want to make sure that they're
14 given the full and fair opportunity to the plaintiff to state
15 the best case he has. And so obviously we understand the
16 perspective that Your Honor is coming from.

17 But here we do have an invitation. I think you have an
18 invitation to look at the 2nd Amended Complaint as you know
19 there's three versions -- and just as a housekeeping matter, in
20 the reply -- not only was there a version of the 2nd Amended
21 Complaint filed today, which I understand you said would be
22 stricken. There's another one attached to reply papers to a
23 declaration. So it's still unclear to me whether we're going on
24 the basis of the one that was noticed with the moving papers or
25 the one that's a part of the reply.

26 But either way you want to go, Your Honor, I think that, if
27 you look at those, it's the same situation that we've had all
28 along both as the taxpayer standing and as to the merits which

1 Mr. Adams addressed as to the discretionary issue for the City.
2 And with that invitation, I do think -- I would hope that you
3 would take it up and look at that 2nd Amended Complaint and see
4 that it's the same. And I'll just point out one thing about the
5 taxpayer standing.

6 It's the same situation as before where there is just a
7 conclusory ascertain that Mr. Hazzard pay taxes. But then he
8 undercuts it by referring to Exhibit R, which is a document that
9 just shows that there was a debt owed to the City. Doesn't
10 discuss what type of debt. So he's undercuts his own allegation
11 and in the version of the 2nd Amended Complaint, which is
12 attached to the declaration of the reply papers, there is an
13 effort to bring in a new, quote, unquote, taxpayer named Queen
14 Thurston, I think is the name. And there's a letter. And all
15 it says is I want to join the lawsuit and I'm a taxpayer.

16 So I think by bringing this forward he's shown that he
17 can't do it. And I think that it's fair then to say it's now
18 been enough time. And this is his, you know, it's the 2nd
19 Amended Complaint he's basically put forth. We're going to do
20 the same demurrer again. And it's going to be an hour at the
21 courthouse. And it's costing the court time and money. It's
22 costing us time and money and it's just not -- it's just not
23 right. And I think it's fair enough to do it now and to look at
24 that 2nd Amended Complaint and make a decision.

25 THE COURT: Mr. Hazzard.

26 MR. HAZZARD: Yes, Your Honor.

27 THE COURT: Why should this continue taking up everybody's
28 time? It is apparent to me even without the comments of these

1 two gentlemen standing to your left that you're not going to be
2 able to plead a claim against the City of Oakland and all these
3 individuals. And I've told you that before. And they're saying
4 that nothing you filed including what you brought in this
5 afternoon is any different.

6 So why shouldn't this just, you know, be dismissed? You
7 take your shot of at Court of Appeal if that's what you want to
8 do. You go out and talk about it in various public forums if
9 that's what you want to do. But I don't have any relief that I
10 can give you now. So why should I continue what's going on
11 here?

12 MR. HAZZARD: Thank you, Your Honor.

13 First of all, counsel has presented a case to you
14 Foxborough. Foxborough is not relevant to this case.
15 Foxborough --

16 THE COURT: I'd appreciate it actually if you'd answer my
17 question.

18 MR. HAZZARD: But --

19 THE COURT: Answer my question.

20 MR. HAZZARD: Well, this is a fluid action. Every time I'm
21 uncovering information that goes to the heart of this matter,
22 we're dealing with --

23 THE COURT: Thank you. What have you uncovered?

24 MR. HAZZARD: Fraudulent conveyance.

25 THE COURT: And how do you have standing to challenge what
26 you claim to be a fraudulent conveyance.

27 MR. HAZZARD: Kirkeby v. Superior Court, 2004, 33 Cal.4th
28 [sic] addresses a transfer under the UFTA is defined as every

1 mode, direct or indirect where the transaction for which the
2 debtor's access were unreasonably small. And that's what we
3 find here in this case.

4 When we go to Civil Code 3439, dash, 3439.1 [sic]. A
5 debtor is insolvent if, at fair valuations, the sum of the
6 debtor's debts is greater than all the debtor's assets. A
7 debtor who is generally not paying his or her debts as they
8 become due.

9 A transfer made or obligation incurred by a debtor is
10 fraudulent as to a creditor...

11 And the creditors are the City. Then we go --

12 THE COURT: Wait. Wait. Okay. You just talked yourself
13 right out of court, Mr. Hazzard. The creditors are the City.
14 They're not you. So you don't have standing.

15 MR. HAZZARD: No. The creditors -- if I may, Your Honor.
16 The creditors are the City or the citizens and the residents of
17 it, who will suffer as a result of the City incurring a debt
18 because the defendant Tagami has insufficient capitalization as
19 required and as the City has so stated.

20 Additionally, under allowing for an amended complaint. We
21 look at Civil Code procedure section 403.010, dash, 403.090,
22 which says: If a plaintiff, cross-complainant, or petitioner
23 files an amended complaint or other amended initial pleadings
24 that change the jurisdictional classification to limited to
25 unlimited. The parties at the time of the filing the pleading,
26 shall pay the reclassification fees provided. Unlimited to
27 limited no reclassification fee is required. If under, 403.030,
28 if a party in a limited civil case files a cross-complaint that

1 causes the action or proceeding to exceed the maximum amount in
2 controversy for a limited civil case or otherwise.

3 You got 403.030. You got 403.040. You have -- then the
4 various sections under those respective codes. And where
5 there's the -- the defendants have exhaustively tried to say I
6 don't have standing. So I'm moving towards the next move.
7 526(a) of the Civil Code says, the citizens do have standing.

8 So now I have to quash the exhaustive use of the standing
9 issue. Queen Thurston and I have submitted a -- and I could
10 submit also the taxpayers' assessment.

11 THE COURT: Tell you what, Mr. Hazzard. Here's what I'm
12 going to do.

13 MR. HAZZARD: Yes, sir.

14 THE COURT: I instructed my clerk to strike your -- what is
15 it, 2nd or 3rd Amended Complaint?

16 MR. HAZZARD: It's a draft, sir.

17 MR. SIEGEL: There's three 2nd Amended Complaints, Your
18 Honor.

19 THE COURT: Well, I'll accept this. I'll file this. I'll
20 look at it.

21 MR. HAZZARD: Yes, sir.

22 THE COURT: I want an order from you upholding -- granting
23 the demurrer without leave to amend and dismissing the matter.
24 I'll consider that order when I get it. Show it to Mr. Hazzard
25 for approval as to form. If he doesn't approve it within a
26 timely period of time. Submit it to the Court. I'll look at it
27 and I'll give very serious consideration to granting it and
28 putting an end to this case.

1 And Mr. Hazzard, if I should do that, then you know where
2 to go from here.

3 MR. HAZZARD: Yes, sir.

4 THE COURT: There's the Court of Appeal who looks at what
5 the trial courts do and that may be your remedy.

6 Thank you all very much.

7 MR. ADAMS: Thank you, Your Honor.

8 THE COURT: Case management.

9 MR. SIEGEL: I hate to say that but...

10 THE COURT: I don't think it's going to be necessary, but I
11 will set a case management conference for June 6th, 2013, at
12 3:00 p.m. in the event the matter hasn't been disposed of in
13 this court.

14 MR. HAZZARD: What was that date, Your Honor?

15 THE COURT: June 6th, 2013, 3:00 p.m.

16 MR. HAZZARD: Thank you. Thank you very much, Your Honor.

17 MR. SIEGEL: Thank you very much.

18 MR. HAZZARD: Thank you.

19
20 (Proceedings were concluded.)

21 ---oOo---

1 STATE OF CALIFORNIA }
2 } SS
3 COUNTY OF ALAMEDA }

4
5 I, DORIANN RENAUD, CSR 9772, do hereby certify that I am an
6 Official Reporter of the Superior Court in and for the County of
7 Alameda, State of California, and that as such I reported the
8 proceedings had in the foregoing matter at the time and place
9 set forth herein;

10 That my stenographic notes of said proceedings were transcribed
11 into typewriting by me and that the preceding pages numbered 1
12 through 9, constitute a full, true and correct transcription of
13 said notes.

14 Dated this 14th day of March, 2013 executed at Oakland,
15 California.

16
17
18 _____
19 DORIANN RENAUD, CSR
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|--|--|--|---|--|
| <p>A</p> <p>able 2:19 7:2 accept 9:19 access 8:2 action 2:19 3:2 4:15 7:20 9:1 adams 1:5 2:9,9,21 2:22 3:16,18 4:18 4:21,28 5:3,6 6:1 10:7 add 2:21 5:12 additionally 8:20 addressed 6:1 addresses 7:28 administration 3:23 administrator 3:14 3:14 afforded 2:27 afternoon 2:1,5,7,9 2:11,13 7:5 ago 3:9 al 3:7,18,20 2:3 alameda 3:2 11:2,7 alive 5:2 aliza 3:16 allegation 6:10 allegations 5:6 allow 3:15 allowed 3:14 allowing 8:20 amb 3:20 amend 2:28 3:5,6 5:13 9:23 amended 2:24 3:8 3:9,12 5:18,20 6:3 6:11,19,24 8:20 8:23,23 9:15,17 amendment 3:2,3 3:20 4:27 amount 9:1 answer 7:16,19 apparent 6:28 apparently 2:15 appeal 7:7 10:4 appearances 1:1</p> | <p>2:6 appearing 2:10 appreciate 7:16 approval 9:25 approve 9:25 army 3:28 ascertain 6:7 assessment 9:10 assets 8:6 assistant 3:14 atta 2:26 attached 5:22 6:12 attended 4:5 attorney 1:5,7 august 4:22 auletta 3:18 authority 4:2</p> <p>B</p> <p>base 3:28 basically 6:19 basis 3:5 5:24 behalf 2:10 believe 3:16 5:8 best 5:15 blackwell 3:14 briefed 3:24 bring 5:8 6:13 bringing 6:16 brooks 3:13 brought 3:13 7:4 brunner 3:11 building 3:23</p> <p>C</p> <p>cal 7:27 california 3:1,7,24 11:1,7,15 candidly 4:10 cant 6:17 capitalization 8:18 case 2:26 4:21 5:2 5:15 7:13,14 8:3 8:28 9:2,28 10:8 10:11 cashman 3:17 castigate 4:24</p> | <p>cause 2:19 3:2 causes 4:15 9:1 cag 3:19 certainly 4:28 certify 11:5 challenge 7:25 change 8:24 citing 2:25 citizens 8:16 9:7 city 3:7,10,10,13,14 2:3,12,12 3:27 4:3 4:4,4,5 6:1,9 7:2 8:11,13,16,17,19 civil 8:4,21,28 9:2,7 claim 7:2,26 classification 8:24 clerk 3:13 9:14 client 4:24 code 8:4,21 9:7 codes 9:4 cohen 3:16 collateral 4:23 coming 5:16 comments 6:28 community 3:15 complaint 2:16,24 3:7,8,10,13,23 5:18,21 6:3,11,19 6:24 8:20,23 9:15 complaints 9:17 completely 5:11 concluded 10:20 conclusory 6:7 concur 5:11 conference 10:11 consider 9:24 consideration 9:27 constitute 11:12 contest 2:23 contested 2:17 continue 6:27 7:10 controversary 9:2 conveyance 7:24,26 core 4:1 correct 4:18 5:3 11:12 costing 6:21,22</p> | <p>council 3:10,11 counsel 4:4 7:13 county 3:2,23 11:2 11:6 course 4:26 court 3:1 2:3,13,22 2:25,27,28 3:3,5 3:12,17,19,19,21 3:26 4:9,20,26 5:1 5:4,10,12 6:21,25 6:27 7:7,16,19,23 7:25,27 8:12,13 9:11,14,19,22,26 10:4,4,8,10,13,15 11:6 courthouse 6:21 courts 10:5 creditor 8:10 creditors 8:11,13 8:15,16 crosscomplainant 8:22 crosscomplaint 8:28 csr 3:28 11:5,19</p> <p>D</p> <p>d 1:6 dan 3:15 daniel 3:19 dash 8:4,21 date 10:14 dated 11:14 day 4:3,5 11:14 de 3:12 dealing 3:12 7:22 deanna 3:13 debt 6:9,10 8:17 debtor 8:5,7,9 debtors 8:2,6,6 debts 8:6,7 decision 6:24 declaration 5:23 6:12 defendant 8:18 defendants 3:21 1:5 2:10,12,17 9:5</p> | <p>deficient 3:23 defined 7:28 demurrer 6:20 9:23 demurrers 2:16 3:25 deny 3:5 department 3:4 desley 3:13 determination 2:24 2:27 determine 3:1,3 developer 3:19,20 3:28 development 3:15 different 7:5 dignify 5:6 direct 8:1 director 3:16,17 directors 3:15 discretion 2:27,28 3:4 discretionary 3:27 4:2 6:1 discuss 6:10 dismissed 7:6 dismissing 9:23 disposed 10:12 docket 2:4 document 6:8 doesnt 6:9 9:25 dont 3:14 7:9 8:14 9:6 10:10 doriann 3:27 2:4 11:5,19 draft 9:16 due 4:12,13 8:8</p> <p>E</p> <p>economic 3:15 effort 6:13 either 5:26 ends 4:13 equally 3:4 essence 3:25 et 3:7,20 2:3 event 3:18 10:12</p> |
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IN THE SUPERIOR COURT, STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

---000---

BEFORE THE HONORABLE JOHN M. TRUE, III, JUDGE

GENE HAZZARD,

PLAINTIFF,

NO. RG12642082

VS.

CITY OF OAKLAND, ET AL.

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FEBRUARY 19, 2013

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A P P E A R A N C E S:

FOR THE PLAINTIFF:

GENE HAZZARD
PRO-PER

FOR THE DEFENDANTS:
PHIL TAGAMI AND
DANIEL LETTER

LAW OFFICE OF HANSON BRIDGETT
BY: WILLIAM ADAMS
425 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CA 94105

FOR THE DEFENDANT:
CITY OF OAKLAND

BURKE, WILLIAMS & SIEGEL
BY: KEVIN SIEGEL
1901 HARRISON STREET, 9TH FLOOR
OAKLAND, CA 94612

REPORTED BY: CHRISTINE BEDARD, C.S.R.

1 FEBRUARY 19, 2013

2
3 THE COURT: LINE THREE IS HAZZARD VS. CITY OF OAKLAND,
4 ET AL. GOOD AFTERNOON. THIS IS GENE HAZZARD VS. CITY OF
5 OAKLAND, ET AL. RG12642082 ON THE CALENDAR TODAY FOR OUR
6 RECONSIDERATION. WE HAVE CHRISTINE BEDARD, CSR, MAKING A RECORD
7 OF THESE PROCEEDINGS. MAY I HAVE THE APPEARANCE OF COUNSEL AND
8 PARTIES. MR. HAZZARD.

9 MR. HAZZARD: GOOD AFTERNOON, GENE HAZZARD.

10 MR. ADAMS: GOOD AFTERNOON, YOUR HONOR. WILLIAM ADAMS
11 APPEARING ON BEHALF OF DEFENDANTS DANIEL LETTER AND PHIL TAGAMI.

12 MR. SIEGEL: GOOD AFTERNOON, YOUR HONOR. KEVIN SIEGEL ON
13 BEHALF OF THE CITY OF OAKLAND DEFENDANTS.

14 THE COURT: ALL RIGHT. IN THIS CASE I ISSUED A TENTATIVE
15 RULING DENYING THE REQUEST FOR RECONSIDERATION ON VARIOUS
16 GROUNDS, AND I UNDERSTAND, MR. HAZZARD, THAT IT IS YOUR WISH TO
17 CONTEST THAT RULING, AND I WILL LISTEN CAREFULLY, BUT BRIEFLY,
18 TO WHAT YOU MAY HAVE TO SAY.

19 MR. HAZZARD: THANK YOU, YOUR HONOR. WE'RE HERE
20 YOUR HONOR, FOR TWO REASONS, IN THIS VENUE. ONE IS BECAUSE
21 DEFENDANT TAGAMI, THEY FAILED TO ENTER ENTRY OF JUDGMENT, FILE
22 AN ENTRY OF JUDGMENT OR ORDER.

23 AND THE OTHER, OBVIOUSLY, IS MY CHALLENGING YOUR
24 TENTATIVE RULING IN THIS MATTER, BECAUSE IN YOUR TENTATIVE
25 RULING, YOUR HONOR, YOU SAID, "THE MOTION IS NOT BASED UPON NEW
26 OR DIFFERENT FACTS, CIRCUMSTANCES OR LAW," WHICH, IN FACT, THERE
27 IS NEW FACTS AND CIRCUMSTANCES.

28 WHEN YOU LOOK AT THE ORIGINAL COMPLAINT, YOU GAVE ME

1 REAL CLEAR INSTRUCTIONS, IN TERMS OF THE PRESENTATION, WHICH I
2 DID ON DECEMBER 14TH, ONE DAY BEFORE YOUR TENTATIVE RULING.
3 THOSE WERE NEW CIRCUMSTANCES. HAD I FILED -- ALTHOUGH YOU FILED
4 A TIMELY RULING ON DECEMBER 14TH, HAD I FILED THAT ON THE 12TH
5 OF DECEMBER, YOU MAY NOT HAVE MADE THAT RULING, BECAUSE YOU
6 DIDN'T HAVE THE FIRST AMENDED COMPLAINT IN YOUR POSSESSION TO
7 REVIEW.

8 THE NEW FACTS IN EVIDENCE ARE FRAUD. WHEN YOU LOOK AT
9 PAGE 30, THE FOURTH CAUSE OF ACTION, WHICH WAS NOT IN THE FIRST
10 COMPLAINT, ORIGINAL COMPLAINT, IT'S FRAUD. PAGE 34, THE FIFTH
11 CAUSE OF ACTION, VIOLATION OF CONTRACT CODES. WHEN WE LOOK AT
12 17200 OF THE BUSINESS AND PROFESSIONAL [SIC] CODE, 3439.9 ALSO,
13 BOTH OF WHICH ARE NEW FACTS, THAT DID NOT APPEAR IN THE ORIGINAL
14 COMPLAINT. I WAS PREPARED TO DO AN APPEAL, BUT INSTEAD, BECAUSE
15 OF THE ECONOMICS, I DID A MOTION FOR RECONSIDERATION.

16 ON DEFENDANT'S FAILURE TO FILE AN ENTRY OF THE ORDER, I
17 WILL CITE NATIONAL ADVERTISING V. CITY OF ROHNERT PARK, 1984 160
18 CAL APP. 3 614; AN UNTIMELY FILING.

19 WHEN WE GO TO THE FRAUD QUESTION ISSUE, I'LL USE
20 MAXWELL V. SANTA ROSA, 53 CAL 2ND 274 WHERE THE ISSUE OF
21 FRAUD -- AND THAT'S WHAT I'M ALLEGING, AND YOU DON'T HAVE TO
22 SHOW FRAUD. IT'S A SITUATION WHERE, EVEN IF FRAUD IS
23 THREATENED, IT'S A BASIS FOR A -- A CONSIDERATION IN THIS
24 MATTER.

25 WHEN WE GO TO KIRKEBY, V. SUPERIOR COURT, 2004 33 CAL 4
26 642, AND THIS REALLY MAKES A POINT, "A REAL PROPERTY CLAIM AND,
27 THEREFORE, SUPPORTS THE RECORDING OF A NOTICE OF PENDENCY OF
28 ACTION COMMONLY REFERRED TO AS A LIS PENDENS." THIS WAS -- "A

1 LIS PENDENS IS A RECORDED DOCUMENT GIVING CONSTRUCTIVE NOTICE
2 THAT AN ACTION HAS BEEN FILED AFFECTING" THE "TITLE."

3 THIS FRAUD ALLEGATION IS AFFECTING A FRAUDULENT
4 CONVEYANCE IS AFFECTING THE TITLE ON THIS PROPERTY CLAIM, AND
5 WE'RE TALKING ABOUT A PROPERTY CLAIM. WE'RE NOT TALKING ABOUT A
6 PROPERTY INTEREST. WHEN YOU LOOK AT KIRKEBY, IT'S THE PROPERTY
7 CLAIM, NOT A PROPERTY INTEREST.

8 AND I THINK WE COULD GO FURTHER, AND WE USE DAVIS V.
9 CITY OF SANTA ANA, 108 CAL. APP 2ND 669. THE DISCRETIONARY
10 POWERS OF THE MUNICIPAL AUTHORITIES WOULD NOT BE INTERFERED WITH
11 A SUIT BY A TAX PAYER FOR AN INJUNCTION IN ABSENCE OF FRAUD,
12 YOUR HONOR.

13 THE ONLY RESTRICTIONS IMPOSED BY THE JEWEL OF BASIC LAW
14 IS THAT SUCH DISPOSITION SHALL BE FOR THE BENEFIT OF THE CITY
15 AND ITS CONSTITUENTS. SO YOU IGNORE -- LET ME SAY IT APPEARS
16 THAT YOU'VE IGNORED THAT FIRST AMENDED COMPLAINT, AND IT CLEARLY
17 ESTABLISHED FRAUD.

18 AND SO WE'RE TALKING ABOUT TRYING TO PREVENT ANY
19 FURTHERANCE IN THIS MATTER, BECAUSE IT'S ALREADY SHOWN BY THE
20 CITY'S OWN DOCUMENTATION THAT DEFENDANT TAGAMI DOES NOT HAVE THE
21 FINANCIAL CAPACITY, NOR DOES HE HAVE THE EXPERIENCE, AND IF
22 WE'RE LOOKING AT THE BUDGETARY CONSTRAINTS OF THE CITY, IT'S
23 IRRESPONSIBLE FOR BOTH THE LEGISLATIVE BODY, AND, WITH ALL DUE
24 RESPECT, THIS COURT, TO IGNORE COMPELLING SITUATIONS AS IT
25 AFFECTS THE CITY'S BUDGETARY SITUATION.

26 THE COURT: THANK YOU, MR. HAZZARD.

27 MR. HAZZARD: THANK YOU, YOUR HONOR.

28 THE COURT: ANY RESPONSE, MR. ADAMS OR MR. SIEGEL?

1 MR. ADAMS: BRIEFLY, YOUR HONOR. WHEN WE WERE HEARD ON
2 THE MOTION TO EXPUNGE THE LIS PENDENS, THE COURT WAS VERY CLEAR
3 IN DIRECTING MY OFFICE TO PREPARE A PROPOSED FORM OF ORDER, AND
4 YOU ASKED FOR IT TO BE DELIVERED TO YOU NO LATER THAN
5 DECEMBER 20.

6 IT WAS DELIVERED EARLY. YOU SIGNED IT BEFORE
7 CHRISTMAS. IT WAS DULY RECORDED. THERE'S NO UNTIMELINESS IN
8 THE ENTRY OF THE ORDER, YOUR HONOR.

9 SECONDLY, WITH RESPECT TO THE MOTION FOR
10 RECONSIDERATION, MR. HAZZARD HAS ADVANCED NO NEW ARGUMENTS THAT
11 WEREN'T FOUND IN HIS PAPERS, AND HIS ARGUMENTS ARE NOT IMPROVED
12 BY REPETITION HERE TODAY. WE DON'T GET TO THE ISSUE OF
13 LIS PENDENS, BECAUSE SIMPLY HE HAS NOT SATISFIED THE FUNDAMENTAL
14 REQUIREMENTS THAT WOULD ENTITLE HIM TO A RECONSIDERATION OF THE
15 FACTS OF THE EXPUNGEMENT ORDER.

16 HOWEVER, IF WE WERE TO GET TO THE EXPUNGEMENT ORDER,
17 MR. HAZZARD'S PAPERS REFLECT A FUNDAMENTAL MISAPPREHENSION OF
18 WHAT A LIS PENDENS IS FOR. IT'S MISGUIDED TO THINK THAT HE, AS
19 A CITIZEN OF THE CITY OF OAKLAND, IS ENTITLED TO RECORD A CLOUD
20 ON TITLE FOR THE OAKLAND ARMY BASE BECAUSE HE DISPUTES OR
21 DISAGREES WITH THE SELECTION OF THE DEVELOPER TO BUILD THAT
22 PROPERTY.

23 SO EVEN IF WE WERE TO GET PAST THE HURDLE, WHICH WE
24 DON'T ON THE RECONSIDERATION, HIS UNDERSTANDING OF THE
25 CIRCUMSTANCES THAT WOULD GIVE RISE TO A LIS PENDENS ARE
26 INCORRECT. I WOULD ALSO SUBMIT, YOUR HONOR, THAT ABSENT THE
27 UNUSUAL CIRCUMSTANCES BY WHICH MR. HAZZARD WAS ABLE TO RECORD A
28 LIS PENDENS IN THE FIRST INSTANCE, MY CLIENT PROBABLY WOULD HAVE

1 BEEN ENTITLED TO A RECOVERY OF SUBSTANTIAL FEES ASSOCIATED WITH
2 UNTANGLING THAT MESS.

3 WE WEREN'T AWARDED THAT IN THE LAST GO-AROUND, AND WE
4 ALLOWED THAT TO GO BY. WE'RE HERE ON A RECONSIDERATION. I
5 WOULD ASK THE COURT UPHOLD ITS TENTATIVE RULING. I THINK IT'S
6 CORRECT, AND WE SHOULD DISPENSE WITH THIS MATTER. THANK YOU.

7 THE COURT: THANK YOU, MR. ADAMS. MR. SIEGEL, ANYTHING?

8 MR. SIEGEL: VERY BRIEFLY. I CONCUR WITH WHAT THE
9 DEVELOPER DEFENDANTS ARE SAYING. THE ONLY THING I'LL ADD IS
10 WHAT YOU'LL SEE WHEN YOU GET TO THE HEARING ON THE DEMURRER ON
11 THE FIRST AMENDED COMPLAINT.

12 THE COURT: WHEN IS THAT?

13 MR. SIEGEL: MARCH 7TH. IT'S COMING SOON. WE HAVE
14 DEMURRED AGAIN THE FRAUD, AND THE CONTRACT CLAIM ISSUES THAT
15 MR. HAZZARD ARE BRINGING UP ARE NOT NEW FACTS. IT'S JUST A
16 REPACKAGING OF THE SAME ALLEGATIONS THAT ALREADY EXISTED AND IS
17 PUTTING A NEW TITLE AND A LITTLE BIT OF SPIN ON THE ISSUES, BUT
18 WE REALLY HAVE THE SAME COMPLAINT HERE.

19 SO THOUGH I AGREE WE SHOULDN'T BE GETTING THERE AS TO
20 ANALYZE THE MERITS OF THE MOTION TO EXPUNGE OR REANALYZING, I
21 MUST SAY, THERE REALLY IS NOTHING NEW ON THOSE ISSUES.

22 THE COURT: ALL RIGHT. THANK YOU, ALL. THE MATTER
23 HAVING BEEN SUBMITTED, THE TENTATIVE RULING IS CONFIRMED AND
24 WILL BE THE COURT'S FINAL RULING, AND I WILL -- I DON'T KNOW IF
25 WE HAVE A CASE MANAGEMENT CONFERENCE SCHEDULED ALREADY.

26 MR. HAZZARD: YOUR HONOR, MAY I --

27 THE COURT: NO. NO.

28 MR. HAZZARD: YOUR HONOR, THEY MADE -- YOUR HONOR, THEY

1 MADE CERTAIN ALLEGATIONS --

2 THE COURT: DO NOT INTERRUPT ME. MADAM COURT REPORTER,
3 WE'LL GO OFF THE RECORD UNLESS MR. HAZZARD CAN CONTROL HIMSELF.

4 THE CLERK: WE DO HAVE IT. IT'S ON MARCH THE 18TH.

5 THE COURT: THAT WILL BE CONTINUED TO, WHAT DATE DID YOU
6 SAY?

7 MR. ADAMS: MARCH 7TH IS THE DEMURER.

8 THE COURT: WE'LL HAVE FURTHER CASE MANAGEMENT ON
9 MARCH 7TH. THANK YOU, ALL.

10 MR. ADAMS: THANK YOU.

11 MR. SIEGEL: MARCH 7TH.

12
13
14 ---000---

1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF ALAMEDA)

4
5
6
7 I, CHRISTINE BEDARD, Certified Shorthand Reporter, do
8 hereby certify that I am a pro tempore reporter of the
9 Superior Court of the State of California, and that as
10 such, I reported the proceedings had in the above-entitled
11 matter at the time and place set for herein.

12 That my stenograph notes were thereafter transcribed
13 into typewriting under my direction; and that the
14 foregoing pages constitute a full, true and correct
15 transcription of my said notes to the best of my ability.

16
17
18 
19 _____
20 CHRISTINE BEDARD, C.S.R. #10709

21
22 dated: February 25, 2013
23
24
25

1 **PROOF OF SERVICE (CCP 1013a, 2015.5)**

2 I am over the age of eighteen years and not a party to the within action; my resident
3 address is 731 Mandana Blvd., Oakland, CA 94610.

4 On the date below I served the following document(s), the original of which was/were
5 produced on paper purchased as recycled, in accordance with Rules of Court §201(b):

6 **NOTICE OF APPEAL; ELECTION TO PROCEED UNDER RULE 8.124, CALIFORNIA**
7 **RULES OF COURT; DESIGNATION OF REPORTER'S TRANSCRIPT WITH**
8 **SUBSTITUTION OF CERTIFIED TRANSCRIPT**

9 to:

10 *Counsel for the City of Oakland*
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14
15 X BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the
United States mail at San Francisco, California.

16 BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the
17 office of the person(s) listed above.

18 BY FEDERAL EXPRESS. I caused such document(s) to be delivered by Federal Express
to the office of the person(s) listed above.

19 BY FACSIMILE TRANSMISSION. I caused such document(s) to be delivered by
20 facsimile transmission at or about Enter time on that date. This document was transmitted
21 by using a facsimile machine that complies with California Rules of Court Rule 2003(3),
telephone number (415) 391-6965. The transmission was reported as complete and without
22 error. A copy of the transmission report, properly issued by the transmitting machine, is
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23 BY ELECTRONIC TRANSMISSION. By e-mailing the document(s) to the persons at the
24 e-mail address(es) listed based on a court order or an agreement of the parties to accept
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unsuccessful was received within a reasonable time after the transmission.

25 I declare under penalty of perjury that the foregoing is true and correct. Executed on April
26 8, 2013, at San Francisco, California.

27 _____
HEATHER M. EHMKE