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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 * * *

11 COORDINATION PROCEEDING
SPECIAL TITLE (Rule 1550(b))

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

14 INCLUDED ACTIONS:

15 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 v. DIAMOND FARMING
16 COMPANY, et al.,
Los Angeles Superior Court Case No. BC325201

17 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 v. DIAMOND FARMING
18 COMPANY, et al.,
19 Kern County Superior Court Case No. S-1500-
CV-254348

20 DIAMOND FARMING COMPANY, and W.M.
21 BOLTHOUSE FARMS, INC., v. CITY OF
LANCASTER, et al.,
22 Riverside Superior Court Case No. RIC 344436
[c/w case no. RIC 344668 and 353840]
23

24 AND RELATED ACTIONS.
25

JUDICIAL COUNCIL COORDINATION PROCEEDING
No. 4408

CASE NO. 1-05-CV-049053
Action Filed: October 26, 2005

**BOLTHOUSE PROPERTIES, LLC AND
WM. BOLTHOUSE FARMS, INC.
OPPOSITION TO BLUM TRUST'S
MOTION FOR SUMMARY JUDGMENT /
SUMMARY ADJUDICATION OF ISSUES**

*[Response to Separate Statement; Evidentiary
Objections; Opposition to Request for Judicial
Notice filed concurrently herewith]*

Date: December 22, 2014
Time: 10:00 a.m.
Dept: TBD
Judge: Hon. Jack Komar

26 COME NOW, BOLTHOUSE PROPERTIES, LLC, and WM. BOLTHOUSE FARMS, INC.
27 (hereinafter "BOLTHOUSE"), and hereby submit the following Points and Authorities in Opposition
28 to BLUM TRUST's Motion for Summary Judgment / Summary Adjudication of Issues, as follows:

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I.

SUMMARY OF ARGUMENT

The BLUM TRUST’s Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues (“the Motion”), fails on its face due to its lack of competent evidence in support of numerous propositions, its reliance on numerous completely unsupported arguments, and the resulting failure to shift the burden to the opposing party(ies). Further, the Motion cannot dispose of any complete cause of action, as discussed below. While the BLUM TRUST purports to seek “summary adjudication of issues” in the alternative, Code of Civil Procedure section 437c does not allow for such a proceeding.

Finally, there are significant substantive deficiencies in the arguments advanced by the BLUM TRUST. For instance, the assertion that BLUM TRUST is part of a “Farming Unit” with BOLTHOUSE is certainly disputed (and in fact, wholly unsupported). Further, the quantification of alleged water usage is both legally unsupported and factually incorrect, and in any case necessarily involves disputed questions of fact. In addition, the BLUM TRUST’s attempt to apply equitable and/or judicial estoppel is severely flawed both legally and factually, as are the attempts to establish the various affirmative defenses.

II.

SUMMARY JUDGMENT STANDARD

Code of Civil Procedure section 437c(c) states, in pertinent part, that “[a] Motion for Summary Judgment shall be granted if all the papers submitted show there is no triable issue as to any material fact and that the party moving is entitled to judgment as a matter of law.” In order to meet that burden, a party seeking summary judgment must show either that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. Only when that burden is met does the burden shift to the opposing party to show that a triable issue of fact exists as to that cause of action. (*Hanson v. Grode* (1999) 76 Cal. App. 4th 601, 603-604; *Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 855.) The matter to be determined by the Court on a summary judgment motion is whether facts have been presented which give rise to a triable issue. (*Pettis v. General Telephone Co.* (1967) 66 Cal. App. 2d 503, 505.)

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III.

THE MOTION IS INAPPROPRIATE AS AGAINST BOLTHOUSE

There is no operable pleading as between BOLTHOUSE and the BLUM TRUST. Therefore, the BLUM TRUST has no authority to seek relief as against BOLTHOUSE by way of this Motion. (*See* Code Civ. Proc. § 437c(p) [describing the burden-shifting on summary judgment as between a plaintiff and a defendant, or a cross-complainant and a cross-defendant].) The BLUM TRUST is not a plaintiff against BOLTHOUSE, and has identified no authority that would permit it to seek affirmative relief against BOLTHOUSE, as the Motion does. (*See* Motion, 25:2.) Further, the BLUM TRUST has expressly released any claims that it may have had against BOLTHOUSE arising out of the Lease between the parties. (*See* Declaration of Richard G. Zimmer, ¶3, Ex. “B”).

IV.

BLUM TRUST HAS FAILED TO SHIFT THE BURDEN ON SUMMARY JUDGMENT

The fundamental problem with the Motion is that it does not produce any competent evidence or credible argument that the facts upon which it relies are true—the result of which is that the Motion cannot shift the burden as required by Code of Civil Procedure section 437c. (*See Aguilar, supra*, 25 Cal.4th at 855.) It is not sufficient in California for a defendant moving for summary judgment to “point[] out through argument” the merits of his defense or the asserted lack of merit to the opposing party’s case. (*See id.*) The basis of the Motion’s argument is that the BLUM TRUST created a “farming unit” with Bolthouse, and is therefore entitled to use a specific amount of water—this is supported neither by facts nor law, but rather only by argument. The Motion should fail for this reason alone.

V.

SUMMARY ADJUDICATION OF ISSUES WOULD BE IMPROPER

Before discussing the substantive deficiencies of the Motion, it bears noting that the BLUM TRUST’s request that certain factual issues be determined is inappropriate. Code of Civil Procedure section 437c(f)(1) allows a party to seek summary adjudication of “one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty[.]” (Code Civ. Proc. § 437c(f)(1).) The Code of Civil Procedure does not authorize a

1 party to seek a determination of the four specific factual and legal matters identified by the BLUM
2 TRUST. (*See* Notice of Motion, 3:20–4:14.)

3
4 **VI.**

4 **BLUM TRUST IS NOT ENTITLED TO SUMMARY JUDGMENT**

5 The vast majority of the purported facts upon which the BLUM TRUST relies are either
6 disputed or completely unsupported. Some of the many issues, any of which are fatal to the Motion,
7 are: (1) there is and never has been a “farming unit” between BOLTHOUSE and the BLUM TRUST;
8 (2) there is no cognizable legal authority for the “place of use” methodology; (3) the BLUM
9 TRUST’s attempt to apply equitable and judicial estoppel is an utter misrepresentation of the facts;
10 and (4) each of the purported affirmative defenses necessarily involve questions of fact.

11 **A. The “Farming Unit” Argument Is Meritless, Or At Least Replete With Questions Of Fact**

12 The “Farming Unit” argument presented by the BLUM TRUST, insofar as it can be
13 deciphered, appears to be that because BOLTHOUSE’s farming operation was on land leased from
14 the BLUM TRUST, the water applied to that land was used by the BLUM TRUST. No cases support
15 this proposition. The BLUM TRUST cites several cases for the proposition that water does not
16 change from realty to personalty until it is delivered to a consumer. (*See* Motion, 9:10–20.) This
17 ignores the fact that BOLTHOUSE was, at all times, the party using the water—there is nothing to
18 support the argument that the BLUM TRUST pumped or used the groundwater, there is no
19 explanation offered as to how the parties were part of a “Farming Unit,” or what the significance of
20 that would be in any event.

21 The only case cited for the statement that BLUM TRUST is “classified as a ‘Farming Unit’
22 with BOLTHOUSE FARMS” is *Ickes v. Fox* (1937) 300 U.S. 82, 94. That case does not discuss a
23 “Farming Unit.” Rather, the *Ickes* Court held that the United States, as a mere “carrier and distributor
24 of” water to the party who actually used it, was not an indispensable party to the action. (*See id.*)
25 BOLTHOUSE, in this case, was not carrying and distributing water to BLUM TRUST, but was using
26 the water pumped from its land for its own farming operations.

27 Further, nowhere does the Motion cite any case or evidence supporting the proposition that
28 the BLUM TRUST was part of a “Farming Unit” with the BOLTHOUSE entities. The BLUM

1 TRUST was not farming anything; rather, the BOLTHOUSE entities and the parcels which *they* were
2 farming could constitute a “Farming Unit.” In addition to the utter lack of support for this
3 foundational proposition of the Motion, there are certainly triable issues of fact as to its veracity.

4 B. The Purported “Place Of Use” Methodology Is Legally Unsupported And Factually Disputed

5 The only “evidence” submitted to support the assertion that the BLUM TRUST is entitled to
6 the benefit of BOLTHOUSE’s is citation to various papers filed by other parties to this litigation. (*See*
7 *Motion*, 10:3–25.) Of course, this is not evidence at all. (*See Evidentiary Objections* filed
8 concurrently herewith.) The court is certainly empowered to take judicial notice of the fact that the
9 PUBLIC WATER SUPPLIERS and the CITY OF LOS ANGELES filed certain documents, but it
10 cannot judicially notice the truth of statements within those documents. (*Salazar v. Upland Police*
11 *Dept.* (2004) 116 Cal.App.4th 934, 946; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369,
12 374.)

13 Further, the BLUM TRUST’s statement that its “correlative rights attaches [*sic*] to such
14 ‘future or prospective’ reasonable beneficial uses, the quantity of which cannot be fixed in amount
15 until the need arises” is entirely inconsistent with the argument that the BLUM TRUST is entitled to
16 claim a specific quantification of its water rights on Summary Judgment. (*See Motion*, 11:16–19.) By
17 this Opposition, BOLTHOUSE does not offer an argument regarding the BLUM TRUST’s
18 correlative rights—but BLUM TRUST cannot establish a claim to a specific allocation of water
19 without addressing disputed questions of fact as to whether such allocation is appropriate or in what
20 amount that allocation should be.

21 C. The Attempt To Apply Estoppel Is Inappropriate, Particularly On Summary Judgment

22 The Motion’s assertion that BOLTHOUSE leased the BLUM TRUST’s water rights is just
23 flatly incorrect, and none of the evidence submitted would support that assertion. BOLTHOUSE
24 leased land from the BLUM TRUST. The attempt to construe the Lease’s acknowledgement of the
25 Antelope Valley Basin adjudication as a lease of water rights is simply absurd—whether the
26 covenants in the Lease run with the land or not, there is nothing in the Lease that would suggest
27 BOLTHOUSE was leasing BLUM TRUST’s water rights.

28 Further, the quotation from the Response to BLUM TRUST’s Special Interrogatories, Set

1 One, No. 92 is a blatant misrepresentation. (*See* Motion, 12:16–22.) The Interrogatory asked that
2 responding party set forth any lease term authorizing the delivery of groundwater from an adjacent
3 property; the Response states that the BOLTHOUSE lease rights are set forth in the Lease (and the
4 Lease does not support the proposition advanced by the BLUM TRUST).

5 The Motion makes a similar misrepresentation to the court by contending that BOLTHOUSE
6 FARMS “relinquished” its water rights. BOLTHOUSE FARMS did no such thing—rather,
7 BOLTHOUSE FARMS sold its land (and water rights) to BOLTHOUSE PROPERTIES after this
8 action had begun, as the BLUM TRUST is well aware and as is shown by the evidence submitted in
9 connection with the Motion.

10 The fallacy of the BLUM TRUST’s argument on this point is demonstrated at Page 13, Lines
11 17–23 of the Motion. When one disregards the blatant misrepresentations and unsupported
12 arguments, the argument set forth by the BLUM TURST is that because (1) the Lease states that its
13 covenants run with the land, (2) BOLTHOUSE referred BLUM TRUST to the terms of the Lease in
14 response to a discovery request regarding the right to deliver groundwater from an adjacent parcel to
15 the leased parcel, and (3) BOLTHOUSE FARMS is making no claim as a result of the sale of its
16 property and water rights to BOLTHOUSE PROPERTIES, somehow this all results in estopping
17 BOLTHOUSE from contesting BLUM TRUST’s position. This is an extreme non-sequitur, and is
18 demonstrative of the meritless nature of BLUM TRUST’s Motion.

19 D. The Motion’s “Computation” Is Itself A Question Of Fact

20 BLUM TRUST attempts to quantify the allocation to which it contends it is entitled—which,
21 as discussed above, it is not—by relying on evidence previously submitted by BOLTHOUSE and the
22 declaration of BLUM TRUST’s purported expert. (*See* Motion, 14:2–23.) These matters are
23 necessarily questions of fact. In addition to the impropriety of relying on the truth of statements in
24 judicially noticed documents (*see Salazar, supra*, 116 Cal.App.4th at 946; *Joslin, supra*, 184
25 Cal.App.3d at 374), there is a direct contradiction between this “computed” amount of 531 acre-feet
26 and the amount testified to by Dan Wilke, which was 409.5 acre-feet. (*See* Response to UMF 19.)

27 This contradiction alone constitutes a triable issue of fact and requires that the entire Motion
28 be denied.

1 E. The Motion Does Not Establish Any Affirmative Defenses

2 The first affirmative defense discussed in the Motion is that, because “BLUM TRUST has
3 exercised its groundwater production rights in accordance with the CA Constitution, decisional and
4 statutory law and in conformity with good community farming standards and operations[,]” equitable
5 principles preclude BLUM TRUST’s water rights from being addressed. There is no authority cited
6 for this argument, and as discussed above, there are numerous triable issues of material fact regarding
7 BLUM TRUST’s purported exercise of its groundwater rights and the novel “Farming Unit” theory.

8 The second affirmative defense asserted in the Motion is that, because the PUBLIC WATER
9 SUPPLIERS took a certain approach to allocating groundwater rights, they cannot contest the
10 assertions in the Motion. Again, no legal authority is cited for this proposition, and the reliance on
11 the misguided theory that BOLTHOUSE and the BLUM TRUST are a “Farming Unit” presents
12 numerous issues of fact.

13 The third affirmative defense asserted in the Motion is simply that the BLUM TRUST’s rights
14 are “superior or co-equal to the PUBLIC WATER SUPPLIERS’ water rights.” As with the prior two
15 “affirmative defenses,” no legal authority is offered. Indeed, this affirmative defense consists only of
16 the BLUM TRUST stating its desired outcome.

17 The last affirmative defense asserted in the Motion is that the current draft settlement
18 agreement between the parties contravenes BLUM TRUST’s right to equal protection and due
19 process. Once again, no legal authority is cited, and there is nothing approaching competent evidence
20 on this point in the Summary Judgment context.

21 VI.

22 **THE STATE OF BLUM TRUST’S WELLS IS ENTIRELY IRRELEVANT**

23 The Motion’s discussion of the state of BLUM TRUST’s wells has absolutely no bearing on
24 any issue in this action. There is no explanation, beyond a general reference to “equitable principles,”
25 for why the Motion’s fleeting mention of an alleged injury to BLUM TRUST’s wells would entitle
26 BLUM TRUST to Summary Judgment. BOLTHOUSE cannot discern what argument BLUM
27 TRUST is attempting to articulate, but it is at least clear that a determination of factual issues would
28 be necessary to support this argument.

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VI.

CONCLUSION


While styled as a Motion for Summary Judgment, or in the Alternative, Summary Adjudication, the BLUM TRUST's moving papers amount to nothing more than argument. Summary Adjudication of various specific factual issues, as requested in the Notice of Motion, is not authorized by the Code of Civil Procedure. Further, the Motion relies on the assertion that the BLUM TRUST and BOLTHOUSE were a "Farming Unit," without any legal authority for this proposition—and in any case, it is certainly a disputed issue of fact. The "computation" of the asserted water usage necessarily involves questions of fact. Most importantly, the BLUM TRUST does not offer sufficient competent evidence regarding any of its arguments in order to shift the burden on Summary Judgment. As such, the Motion should be denied in its entirety.

DATED: December 8, 2014

Respectfully submitted,

CLIFFORD & BROWN

By



RICHARD G. ZIMMER, ESQ.

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JOSEPH A. WERNER, ESQ.

Attorneys for BOLTHOUSE PROPERTIES, LLC
and WM. BOLTHOUSE FARMS, INC.

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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Suite 900, Bakersfield, CA 93301.

On December 8, 2014, I served the foregoing document(s) entitled:

BOLTHOUSE PROPERITES, LLC. AND WM. BOLTHOUSE FARMS, INC.
OPPOSITION TO BLUM TRUST’S MOTION FOR SUMMARY
JUDGMENT/SUMMARY ADJUDICATION OF ISSUES

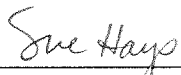
by posting the document listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter. All parties listed on the Santa Clara Superior Court in regard to the Antelope Valley Groundwater Matter are hereby incorporated within by this reference.

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

Executed on December 8, 2014, at Bakersfield, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.



SUE HAYS
{2455-2}