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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Coordinated Proceedings)
Special Title {Rule 1550 (b)})
Judicial Council Coordination Proceeding
No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**)
Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

Included Actions:)
**BLUM TRUSTEE'S REPLY BRIEF RE:
DEMURRER TO SECOND AMENDED
COMPLAINT TO QUIET TITLE OF
PLAINTIFF WM. BOLTHOUSE FARMS,
INC.**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.)
Los Angeles County Superior Court)
Case No. BC 325 201)
Hearing Date: March 3, 2008

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.)
Kern County Superior Court)
Case No. S-1500-CV-254-348)
Time: 10:00 a.m.
Dept.: 1
Judge: Hon. Jack Komar

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of)
Lancaster; Diamond Farming Co. v. City)
of Palmdate Water District.)
Complaint Filed: 1/25/01
First Amended Complaint filed: 5/1/01
Second Amended Complaint filed: 11/14/03
& 12/3/03

Riverside County Superior Court)
Consolidated Action Nos. RIC 344 840,)
RIC 344 436, RIC 344 668)
Trial Date: Not Set

AND RELATED CROSS-ACTIONS.

Defendant SHELDON R. BLUM, TRUSTEE For The SHELDON R. BLUM TRUST
(hereinafter "BLUM TRUSTEE"), hereby submits his Reply Brief to Plaintiff WM. BOLTHOUSE

1 FARMS, INC., (hereinafter "BOLTHOUSE FARMS"), Opposition, as follows:

2 I. INTRODUCTION

3 BLUM TRUSTEE filed a Demurrer to the Second Amended Complaint To Quiet Title of
4 Plaintiff BOLTHOUSE FARMS (hereinafter "SAC), on the following grounds under Code of Civil
5 Procedure §§ 430.10: (1) Another action pending between the same parties or privies on the
6 same cause of action (subd. (c)); (2) Defect or misjoinder of parties (subd. (d)); (3) Failure to
7 state facts sufficient to constitute a cause of action (subd. (e));and (4) Uncertainty (subd. (f)).
8 BLUM TRUSTEE also requested an award for reasonable attorney fees and other costs of suit.
9 (Cal. Civ. Code § 1717, Cal. Civ. Proc. § 1033.5(a)(10)(A)).

10 Plaintiff BOLTHOUSE FARMS filed opposition to the Demurrer, stating: (1) BLUM
11 TRUSTEE has no standing to file a Demurrer since he is not a defendant in the action; (2) The
12 Court may not Judicially Notice the Lease Agreement between BOLTHOUSE FARMS and BLUM
13 TRUSTEE; (3) Both Plaintiff BOLTHOUSE FARMS and Cross-Complainant BOLTHOUSE
14 PROPERTIES are "real parties in interest" because they are separate entities and any conflict
15 between their pleadings is of no consequence; (4) Plaintiff asserts no claim of right to water
16 beneath BLUM'S property paramount or adverse to BLUM, but rather are subservient and
17 founded upon the rights conferred by the lease; (5) There is no defect or misjoinder of parties
18 because BLUM TRUSTEE is not a DOE Defendant, indispensable party or interested party to the
19 SAC; (6) The filing of the Cross-Complaint of BOTLHOUSE PROPERTIES after the filing of
20 Plaintiff BOLTHOUSE FARMS SAC does not constitute another pending action; (7) The Cross-
21 Complaint (i.e. omits SAC), is not uncertain, and therefore no further comment is warranted; and
22 (8) Judicial Notice of the Lease Agreement and the contractual issue of attorney fee is improper
23 and should not be addressed herein.

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26 ////

1 II. LEGAL ANALYSIS

2 1. THE SAC CLEARLY IDENTIFIES BLUM TRUSTEE AS A DEFENDANT
3 WHO IS A DOE DEFENDANT, AS WELL AS AN INDISPENSABLE OR
4 INTERESTED PARTY, AS A MATTER OF LAW.

5 Plaintiff BOLTHOUSE FARMS has a patent misunderstanding of the thrust of its
6 allegations asserted in its verified SAC Quite Title action against known "LEASED" fee owners of
7 record, including BLUM TRUSTEE. It goes well beyond Plaintiff's claim to be quieting title
8 "against certain municipal purveyors only."

9 BOLTHOUSE FARMS action clearly alleges superior priority of overlying water rights on
10 each "PARCEL" identified in Exhibit "A", in connection with its farming operations on
11 "PROPERTIES" it owns and leases. BOLTHOUSE FARMS further alleges that "plaintiff's
12 overlying water rights" are superior to any rights defendants may have to take groundwater for
13 non-overlying use." Plaintiff then alleges that "the claim of each defendant to superior or coequal
14 rights to extract and use groundwater is without basis in law or equity". (SAC Pg. 4, ¶ 8, ¶ 10, ¶
15 12, ¶ 14).

16 Under a misconception of the law, BOLTHOUSE FARMS failed to name and serve any
17 of the expressly identified fee owners, and disingenuously claimed to be ignorant of the true
18 names and capacities of "All Persons Unknown Claiming Any Legal Or Equitable Right, Title,
19 Estate, Lien, Or Interest in the PROPERTIES Described In This Complaint Adverse to Plaintiff's
20 Title, Or Any Cloud Upon Plaintiff's Title Thereto." Plaintiff further claims to be ignorant of DOE
21 Defendants "who claim that they have water rights to extract groundwater for non-overlying use
22 based on rights co-equal or superior to Plaintiff. (SAC Pg. 3 ¶ 6).

24 BOLTHOUSE FARMS incorrectly surmised that BLUM TRUSTEE claims no equitable or
25 legal rights, title or interests in the groundwater beneficially used on the BLUM PARCELS adverse
26 to, inconsistent with, competing against or negatively impacted by Plaintiff's purported title claim.

1 Plaintiff's position, that there is no defect or misjoinder of parties since BLUM TRUSTEE is not a
2 indispensable or interested party or otherwise within the above-stated classification of a "Person
3 Unknown Claiming Any Legal Or Equitable Right, Title, Estate Or interest.." and/or a DOE
4 Defendant is faulty and misplaced as a matter of fact, procedural and substantive law.

5 Immediate action by BLUM TRUSTEE was necessary, based on being clearly identified
6 in the SAC, Exhibit "A", and either named fictitiously as a "Person Claiming Any Legal Or
7 Equitable Right, Estate Or Interest", as a DOE Defendant or otherwise as a matter of law, should
8 have been compulsory or permissively joined in the SAC action. The action in essence is a
9 pending action against the BLUM PARCELS, and to third parties, establishes a perceived cloud or
10 encumbrance on BLUM TRUSTEE'S title. Under Cal. Civ. Proc. Code § 761.010, Plaintiff was
11 required to file a notice of the pending action in the County Recorders Office where the real
12 property described in the SAC is located.

13
14 The SAC also asserts competing and frivolous claims against BLUM TRUSTEE'S
15 property and water rights, and represents a default under the lease, and an injustice and inequity
16 of the BLUM PARCELS 116 agricultural acres, under the California priority water allocation
17 system. Plaintiff's farming conduct is within the classification of 'appropriative use' of water and
18 not 'overlying use of water on the BLUM PARCELS, since it delivers groundwater from another
19 parcel. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224).

20
21 **2. PLAINTIFF NOW CONCEDES THAT BLUM TRUSTEE IS NOT A DEFENDANT**
22 **AND THAT PLAINTIFF DOES NOT CLAIM RIGHTS SUPERIOR OR CO-EQUAL**
23 **TO THOSE OF BLUM TRUSTEE.**

24 Plaintiff now seeks to disaffirm its pleading allegations, and states that: (1) BLUM
25 TRUSTEE is not a party to this action; (2) Plaintiff does not assert any water rights adverse or
26 superior to those of BLUM TRUSTEE; and (3) The only water rights Plaintiff has to the BLUM
27 PARCELS are those expressly granted under the terms of the Lease Agreement between the

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1 parties.

2 Notwithstanding BOLTHOUSE FARMS' recanting position, BLUM TRUSTEE continues
3 to find inconsistency with and variances to BOLTHOUSE FARMS conflicting propositions.
4 Without citing authority, BOLTHOUSE FARMS claims in its opposition that: "A lessee of BLUM'S
5 parcels is free to assert rights to subsurface waters to which his lease grants him use. Such a
6 claim of right asserted by a lessee is not paramount to his lessor, but rather, is subservient and
7 founded upon the rights conferred by the lease. Accordingly, the SAC need not assert the
8 allegations specific to BLUM to establish its quiet title claim against the municipal purveyors".
9 (Opp. Pg. 5, 4-10). Clearly, BOLTHOUSE FARMS relies upon its farming operations for the
10 'beneficial use' of the BLUM PARCELS and leasehold interest under the Lease Agreement to
11 ostensibly claim "overlying water rights" on the BLUM PARCELS. As a matter of law, the title
12 conferred by a lessee's occupancy is not a sufficient interest in real property to enable the
13 occupant to commence or maintain a Quiet Title action. (Civ. Code ¶ 1006). Based on the
14 foregoing, BLUM TRUSTEE requests this Court to sustain the Demurrer without leave to amend.
15

16 **3. PLAINTIFF HAS FAILED TO ESTABLISH THAT IT IS THE REAL PARTY IN**
17 **INTEREST, AS THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME**
18 **PARTIES OR PRIVIES, CONCERNING THE SAME SUBJECT MATTER.**

19 Plaintiff has not established that it is the real party in interest. The allegations contained
20 within Plaintiff BOLTHOUSE FARMS SAC and its successor [assignee, sublessee, transferee]
21 Cross-Complainant BOLTHOUSE PROPERTIES' Cross-Complaint, are essentially identical, rely
22 on and reference the same PARCELS, make claim to the same water rights and arise out of the
23 same conduct as "overlying pumpers". The only distinction between BOLTHOUSE FARMS &
24 BOLTHOUSE PROPERTIES, is in the spelling of their last name. Both parties are sufficiently
25 related and claim to possess the same legally recognized interests in the same subject matter.

26 From the face of their pleadings, the Court can discern that they are in privity with one another, and
27

1 that the filing of BOLTHOUSE PROPERTIES Cross-Complaint is based on acquiring "real party in
2 interest" status via "Assignment" "Sublease" or "Transfer" of leasehold interests.

3 If it is true that BOLTHOUSE FARMS is the real party in interest, as well as
4 BOLTHOUSE PROPERTIES, the SAC is fatally defective as it fails to establish the nature and
5 basis of title. (Cal. Civ. Proc. Code § 761.020(b). Plaintiff's general allegation of overlying water
6 rights on LEASED PARCELS is treated as a conclusion of law (*Stafford v. Ballinger* (1962) 199
7 Cal.App.2nd 289, 292), and a quiet title action cannot lie in favor of an equitable title, as against
8 BLUM TRUSTEE who is the holder of legal title. (*G.R. Holcomb Estate Co.*, (1935) 4 Cal.2nd 289,
9 297).
10

11 **4. PLAINTIFF'S SAC IS UNCERTAIN, AS A MATTER OF LAW.**

12 BOLTHOUSE FARMS refuses to address and oppose the uncertainty issues in its
13 opposition. Instead, Plaintiff only references its privy / successor in interest Cross-Complaint of
14 BOLTHOUSE PROPERTIES and states "No further comment is warranted". (Opp. Pg. 6., ¶ VII).
15 As a matter of law, Plaintiff's response is an admission that the SAC is uncertain, and therefore
16 the Demurrer should be sustained. (See Demurrer to SAC, Pg. 12, Section 8. Uncertainty).
17

18 **5. JUDICIAL NOTICE OF THE LEASE AGREEMENT OR CONSIDERATION**
19 **OF EXHIBIT "B", ARE THE ONLY VEHICLES BOLTHOUSE FARMS HAS**
20 **TO ESTABLISH ANY WATER RIGHTS INVOLVING THE BLUM PARCELS.**

21 Plaintiff BOLTHOUSE FARMS request that this Court disregard the attached Exhibit "B"
22 Lease Agreement as improper material, devoids its SAC Quiet Title allegations concerning water
23 rights arising out of its farming operations on the BLUM PARCELS.

24 Plaintiff's "basis of title" is obviously exclusively predicated on the terms and conditions
25 of the Lease Agreement, which represents the "Best Evidence" to establish an essential element
26 to a Quiet Title action. (Cal. Civ. Proc. § 761.020(b)). Without mandatory or permissive Judicial
27 Notice of the Lease Agreement and/or consideration of the lease terms under Exhibit "B",
28

1 Plaintiff's conclusions of law render the SAC fatally defective and uncertain, and fails to state facts
2 sufficient to constitute a cause of action for Quiet Title against BLUM PARCELS. Likewise, it
3 cannot be ascertained from the pleadings whether Plaintiff's water rights are founded upon a
4 lease that is written, oral or is implied by conduct. (Cal. Civ. Proc. Code § 430.10(f)). Judicial
5 Notice is also warranted as the grounds for the objection to the SAC appears from the express
6 terms of the Lease Agreement (Cal. Civ. Proc. § 430.30(a)). BOLTHOUSE FARMS does not
7 claim surprise or lack of authentication as it was signed by BOLTHOUSE FARMS and in its
8 possession for over 6 years.

9
10 BLUM TRUSTEE'S request for attorney fees herein is also proper as the Lease
11 Agreement provides for the same; the contract was properly attached to the Demurrer as Exhibit
12 "B"; and were incurred to enforce the terms of the contract and/or to indemnify Lessor's economic
13 resource time by being compelled to file this herein Demurrer. (See Ex. "B" Pg. 6, ¶9A.
14 Indemnification, and Pg. 10 ¶ 15(c) Attorney Fees). Additionally, the Declaration of Sheldon R.
15 Blum is proper material under Rules of Court, Rule 3.1112(b), and remains unopposed.

16 **III. CONCLUSION AND REQUEST FOR RELIEF.**

17 Despite Plaintiff's current disavowal of claims, BOLTHOUSE FARMS' opposition either
18 remains unresponsive or without including necessary points and authorities to the many raised
19 pleading defects and/or otherwise cannot be cured by an amendment to the pleadings. Based on
20 the foregoing, Defendant BLUM TRUSTEE respectfully request that this court enter its order
21 sustaining the Demurrer without leave to amend, and award him reasonable attorney fees and
22 other costs of suit.
23

24 DATED: February 5, 2008

LAW OFFICES OF SHELDON R. BLUM

25 By: 

26 SHELDON R. BLUM, Esq.

Attorney For SHELDON R. BLUM, TRUSTEE