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**Attorney for Cross-Defendant SHELDON
R. BLUM, TRUSTEE For The SHELDON
R. BLUM TRUST**

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 CROSS-COMPLAINT OF
BOLTHOUSE PROPERTIES, LLC.**

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
Time: 10:00 a.m.
Dept.: 1
Judge: Hon. Jack Komar

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Kern County Superior Court
Case No. S-1500-CV-254-348

Complaint Filed: 1/25/01
First Amended Complaint filed: 5/1/01
Second Amended Complaint filed: 11/14/03
& 12/3/03

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City
of Palmdate Water District.
Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

Trial Date: Not Set

AND RELATED CROSS-ACTIONS.

Cross-Defendant SHELDON R. BLUM, TRUSTEE For The SHELDON R. BLUM TRUST

1 (hereinafter "BLUM TRUSTEE"), hereby submits his Reply Brief to Cross-Complainant
2 BOLTHOUSE PROPERTIES, LLC. (hereinafter "BOLTHOUSE PROPERTIES"), Opposition, as
3 follows:

4 **I. INTRODUCTION**

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

11
12 BOLTHOUSE PROPERITES filed opposition to the Demurrer stating that the Cross-
13 Complaint does not present any allegations against BLUM, but rather are "against the municipal
14 purveyors only." As provided herein, BLUM TRUSTEE believes that is untrue.

15 The Opposition further states: (1) BLUM TRUSTEE is not a Cross-Defendant and has no
16 standing to file a responsive pleading; (2) The Court may not Judicially Notice the Lease
17 Agreement between BOLTHOUSE FARMS and BLUM TRUSTEE; (3) Both Plaintiff BOLTHOUSE
18 FARMS and Cross-Complainant BOLTHOUSE PROPERTIES are "real parties in interest"
19 because they are separate entities, and any conflict between their pleadings is of no
20 consequence; (4) BLUM TRUSTEE has no standing to object to the lack of verification, but it will
21 provide one; (5) Cross-Complainant asserts no claim of right to water beneath Lessor BLUM'S
22 property paramount or adverse to BLUM, but rather are subservient and founded upon the rights
23 conferred by the lease; (6) The Third and Fourth Causes of Action are not directed against BLUM
24 TRUSTEE; (7) The Fifth Through Tenth Causes of Action are properly pled and procedurally
25 sufficient because they are not directed against BLUM TRUSTEE; (8) There is no defect or
26

1 misjoinder of parties because BLUM TRUSTEE is not a Defendant MOE, indispensable party or
2 interested party to the Cross-Complaint; (9) The filing of the Cross-Complaint after the filing of
3 BOLTHOUSE FARMS SAC does not constitute another action pending since they are separate
4 entities with independent rights; (10) The Cross-Complaint is not uncertain nor subject to attack by
5 BLUM TRUSTEE, and (11) BLUM TRUSTEE'S request for attorney fees is improper and should
6 not be addressed herein.

7
8 **II. LEGAL ANALYSIS**

9 **1. THE CROSS-COMPLAINT DOES NAME BLUM TRUSTEE AS A CROSS-**
10 **DEFENDANT WHO IS A FICTITIOUS MOE, AS WELL AS AN INDISPENSABLE**
11 **OR INTERESTED PARTY, AND WHO FILED A CROSS-COMPLAINT AGAINST**
12 **BOLTHOUSE PROPERTIES.**

13 BOLTHOUSE PROPERTIES has a patent misunderstanding of the thrust of its
14 allegations asserted in its Cross-Complaint. It goes well beyond Cross-Complainant's claim to be
15 quieting title "against municipal purveyors only." Its charging allegations and 'Prayer for Relief'
16 requests a declaration of quieting title to Cross-Complainant's rights to pump and reasonably use
17 groundwater on specifically identified LEASED PARCELS, which includes the BLUM PARCELS.

18 The Cross-Complaint alleges the following pertinent paragraphs:

19 2. Cross-Complainant owns in fee certain parcels of real property,
20 and/or owns water rights for certain properties, (hereinafter individually
21 referred to as a "PARCEL") in the Antelope Valley area of Los Angeles
22 County, California. Each PARCEL has previously been identified in
23 previous Complaints filed by WM. BOLTHOUSE FARMS, INC.

24 4. Cross-Complainant is ignorant of the true names and capacities,
25 whether individual..., or otherwise, of the Cross-Defendants named in
26 this Cross-Complaint as MOE, and therefore sues these Cross-Defendants
27 by these fictitious names.

28 5. By virtue of the location of each PARCEL overlying groundwater,
Cross-Complainant holds an overlying water right or other right to ground-
water, entitling Cross-Complainant to extract groundwater and to put the
water to reasonable and beneficial use on the property. ("Cross-Complainants
overlying water rights").

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7. Cross-Complainant has an appurtenant right and/or other water right to pump and reasonably use groundwater on the parcels at issue in this lawsuit. These rights are superior to the rights of the Cross-Defendants, based on the California priority water allocation system.

8. Cross-Complainant is informed and believes that each Cross-Defendant claims that it has water rights to extract groundwater for uses that are superior to, or coequal with, Cross-Complainant's overlying water rights, based on superior water right, or otherwise, whether in law or equity.

10. Cross-Complainant requests a declaration from the Court quieting title to Cross-Complainant's appurtenant rights to pump and reasonably use groundwater on their PARCELS.

By incorporating into the Cross-Complaint Exhibit "A", of BOLTHOUSE FARMS, SAC, Paragraph 2, includes the BLUM PARCELS, among other PARCELS, defined in that paragraph. Cross-Complainant next claims that it "owns", the water rights to those PARCELS. Paragraph 5, in sweeping brevity, alleges that Cross-Complainant holds overlying water rights or other rights to the groundwater for the reasonable and beneficial use on each PARCEL, classified as "Cross-Complainant's overlying water rights". Paragraph 7, asserts that these rights are superior to the rights of the Cross-Defendants, based on the California priority water allocation system. Paragraph 8, recognizes Cross-Defendants water rights, whether in law or in equity. Paragraph 10, requests an adjudication to quieting title to Cross-Complainants water rights to pump and reasonably use groundwater on the PARCELS.

BLUM TRUSTEE is correctly identified as the fee record owner of one of the LEASED PARCELS, and is an indispensable or interested party to Cross-Complainant's action. Likewise, BLUM TRUSTEE is a MOE Cross-Defendant in Paragraph 4, whose true name and capacity, has always been well known to Cross-Complainant. Cross-Complainant's also complains "against each and every person who subsequently files a Cross-Complaint against BOLTHOUSE PROPERTIES, LLC," which BLUM TRUSTEE had been compelled to do. Cross-Complainant's position that there is no defect or misjoinder of the parties is faulty and misplaced as a matter of

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1 fact, procedural and substantive law.

2 BOLTHOUSE PROPERTIES incorrectly surmises that BLUM TRUSTEE claims no
3 equitable or legal rights, title or interests in the groundwater beneficially used on the BLUM
4 PARCELS adverse to, inconsistent with, competing against or negatively impacted by Cross-
5 Complainant's purported title claim.

6 Immediate action by BLUM TRUSTEE was necessary, based on being clearly identified
7 in the Cross-Complaint, and either named fictitiously as a MOE Cross-Defendant or otherwise as
8 matter of law, should have been compulsory and/or permissively joined in BOLTHOUSE'S action.

9 The action in essence is a pending action against the BLUM PARCELS, and as to third persons,
10 establishes a perceived cloud or encumbrance on BLUM TRUSTEE'S title. Under Cal. Civ. Proc.

11 Code § 761.010, Cross-Complainant was required to file a notice of the pending action in the
12 County Recorders Office where the real property described in the Cross-Complaint is located.

13 The Cross-Complaint also asserts competing and frivolous claims against BLUM TRUSTEE'S
14 property and water rights, as a officious intermeddler, and without just compensation. Its litigation
15 represents an injustice and inequity regarding the BLUM PARCELS 116 agricultural acres under
16 the California priority water allocation system. Consequently, Cross-Defendant was required to
17 file a Cross-Complaint against Cross-Complainant. BOLTHOUSES' farming conduct is within the
18 classification of 'appropriative use' of water and not 'overlying use' of water on the BLUM
19 PARCELS, since it delivers groundwater from another parcel. (*City of Barstow v. Mojave Water*
20 *Agency* (2000) 23 Cal.4th 1224).

21
22
23 **2. CROSS-COMPLAINANT NOW CONCEDES THAT BLUM TRUSTEE IS NOT A**
24 **CROSS-DEFENDANT AND THAT IT DOES NOT CLAIM RIGHTS SUPERIOR OR**
25 **CO-EQUAL TO THOSE OF BLUM TRUSTEE.**

26 Cross-Complainant now withdraws its above-stated allegations, and states that: (1)
27 BLUM TRUSTEE is not a party to this action; (2) Cross-Complainant does not assert any water

1 rights beneath the BLUM PARCELS paramount or adverse to BLUM TRUSTEE; and (3) The only
2 water rights Cross-Complainant has to the BLUM PARCELS are those expressly granted under
3 the terms of the Lease Agreement between BOLTHOUSE FARMS and BLUM TRUSTEE, to
4 which it is not a party.

5 Notwithstanding BOLTHOUSE PROPERTIES recanting position, BLUM TRUSTEE
6 continues to find inconsistency with and variances to BOLTHOUSE PROPETIES conflicting
7 propositions. Without citing authority, BOLTHOUSE PROPERTIES now claims that "A lessee of
8 BLUM'S parcels is free to assert rights to subsurface waters to which his lease grants him use.
9 Such a claim of right asserted by lessee is not paramount to his lessor, but rather, is subservient
10 and founded upon the rights conferred by the lease." (Opp. Pg. 5, ¶ 20-25). "Each cause of action
11 alleges rights to water underlying identified parcels, be it as an overlying owner, overlying lessee,
12 or as a return flow facilitator." (Opp. Pg. 7 ¶ 2-4). Cross-Complainant relies upon its unauthorized
13 farming operations on the BLUM PARCELS and unknown leasehold interest (i.e Assignee /
14 Sublessee / Transferee) under the Lease Agreement in order to import water and claim its
15 ostensible "overlying water rights".

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

21 Cross-Complainant has not established that it is the real party in interest. The allegations
22 contained within Cross-Complainant Quiet Title First Cause of Action, and its predecessor
23 [assignor, sublessor, transferor] Plaintiff BOLTHOUSE FARMS are essentially identical, reference
24 the same PARCELS, make claim to the same water rights and arise out of the same conduct as
25 "overlying pumpers". The only distinction between BOLTHOUSE PROPERTIES & BOLTHOUSE
26 FARMS, is in the spelling of their last name.

1 If it is true that BOLTHOUSE PROPERTIES is the real party in interest, the pleadings
2 fails to state a cause of action for quiet title because Cross-Complaint has not established the
3 nature and basis of title. (Cal. Civ. Proc. Code § 761.020(b). Cross-Complainant's general
4 allegation of ownership is treated as a conclusion of law. (*Stafford v. Ballinger* (1962) 199
5 Cal.App.2nd 289, 292). The title conferred by a lessee's occupancy (assignee, sublessee,
6 transferee), is not a sufficient interest in real property to enable the occupant to commence or
7 maintain a Quiet Title action. (Civ. Code ¶ 1006).

8 **4. THE CROSS-COMPLAINT IS UNCERTAIN, AS A MATTER OF LAW.**

9 BOLTHOUSE PROPERTIES does not address significant uncertainty and ambiguity
10 issues in its opposition. Instead, Cross-Complainant states that the Cross-Complaint is not
11 subject to attack by BLUM, and nevertheless sets forth allegations sufficient to constitute its
12 causes of action. (Opp. Pg. 8., ¶ XI). Cross-Complainant does not want to cure the uncertainty
13 raised in the moving papers, including when and how Cross-Complainant supposedly acquired
14 ownership of the subject water rights, and/or whether Plaintiff's water rights are founded upon a
15 lease that is written, oral, or otherwise is implied by conduct. (Cal. Civ. Proc. Code § 430.10(f)).
16 Cross-Complainant's response is an admission that its opposition is without merit, and therefore
17 the Demurrer should be sustained.
18

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

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

25 Plaintiff's "basis of title" is exclusively predicated on the terms and conditions of the
26 Lease Agreement, which represents the "Best Evidence" to establish an essential element to a

1 Quiet Title action. (Cal. Civ. Prod. § 761.020(b)). Without mandatory or permissive Judicial Notice
2 of the Lease Agreement and/or consideration of the attached Exhibit "B", Plaintiff's conclusions of
3 law render the Cross-Complaint fatally defective to state facts sufficient to constitute a cause of
4 action for Quiet Title. (Cal. Civ.Proc. Code § 430.10(e)). Judicial Notice is also warranted as the
5 grounds for the objection to the Cross-Complaint appears from the express terms of the Lease
6 Agreement (Cal. Civ. Proc. § 430.30(a)).

7 BLUM TRUSTEE'S request for attorney fees herein is also proper as the Lease
8 Agreement provides for the same against anyone holding under the lease; the contract was
9 properly attached to the Demurrer as Exhibit "B", and were incurred to enforce the terms of the
10 contract and/or to indemnify Lessor's economic resource time by having been compelled to file
11 this herein Demurrer. (See Ex. "B" Pg. 6, ¶9A. Indemnification; Pg. 10 ¶ 15(c)). An assignee who
12 receives a tenant's interest in a lease is jointly and severally liable with the tenant for the damages
13 of a landlord. (Cal. Civ. Code § 1995.330). Additionally, the Declaration of Sheldon R. Blum is
14 proper material under Rules of Court, Rule 3.1112(b), and remains unopposed.

15
16 **III. CONCLUSION AND REQUEST FOR RELIEF.**

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

23
24 DATED: February 5, 2008

LAW OFFICES OF SHELDON R. BLUM

25 By: 

26 SHELDON R. BLUM, Esq.
27 Attorney For SHELDON R. BLUM, TRUSTEE