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

ANTELOPE VALLEY
GROUNDWATER CASES

This Pleading Relates to Included Action:
REBECCA LEE WILLIS, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; CITY OF LANCASTER;
CITY OF LOS ANGELES; CITY OF
PALMDALE; PALMDALE WATER
DISTRICT; LITTLEROCK CREEK
IRRIGATION DISTRICT; PALM RANCH
IRRIGATION DISTRICT; QUARTZ HILL
WATER DISTRICT; ANTELOPE VALLEY
WATER CO.; ROSAMOND COMMUNITY
SERVICE DISTRICT; MOJAVE PUBLIC
UTILITY DISTRICT; and DOES 1 through
1,000;

Defendants.

) RELATED CASE TO JUDICIAL
) COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
)
) PLAINTIFF REBECCA WILLIS' BRIEF
) REGARDING RIGHT TO JURY TRIAL
)
)
) Date: January 9, 2009
) Time: 1:30 p.m.
) Dept: 1
) Judge: Hon. Jack Komar
) Coordination Trial Judge

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1 The court requested briefing on the right to jury trial in its minute order
2 dated Tuesday, November 25, 2008. For the following reasons, the Willis class seeks
3 to preserve its right to a jury trial.

4 **I.**
5 **Factual Background**

6 Plaintiff Rebecca Willis filed her original class action complaint on January
7 11, 2007. The court certified the class in September 2007. Notice to the class was
8 recently mailed on December 31, 2008 to over 70,000 landowners. Delay in sending
9 out the notice was due in part to the multiple hearings which resulted in
10 modifications to the class definition and in part to the public water suppliers' failure
11 to compile a list of class members.

12 In its Second Amended Complaint, the Willis Class demanded a right to a
13 trial by jury. On May 6, 2008, the Willis Class filed its Second Amended Complaint
14 and on the face of its pleading requested a trial by jury. Demurrers were filed to the
15 complaint and the court overruled the demurrers on September 2, 2008. The Class'
16 right to a jury trial has at all relevant times been announced and has not since been
17 waived.

18 Since the cases were coordinated, the court has concluded two "trial" phases.
19 One was concluded on November 3, 2006 and the other on November 6, 2008. These
20 phases were largely procedural and jurisdictional in nature. The first phase defined
21 the area of adjudication and therefore all the impacted landowners necessary for a
22 comprehensive adjudication. The second phase defined hydrologic connectivity and
23 the existence of separate sub-basins. No determination on the merits of any of the
24 landowners' rights has been made in these two phases, i.e. no groundwater rights
25 determinations or common law claims of prescription. The Willis class (1) did not
26 participate in the first phase of the "trial" as it preceded the filing of the class action
27 complaint and (2) did not actively participate in the second phase of trial.

28 By far, the most hotly disputed aspect of this case is the public water
suppliers' common law claim of *prescription* - a claim that seeks to assert a priority

1 right to a quantity of groundwater to the detriment of all landowners.¹ In their
2 cross-complaint, the public water suppliers allege:

3 Paragraph 43: “Public Water Suppliers contend that each cross-defendant’s rights to
4 pump water from the Basin are subordinate to the Public Water Suppliers’ prescriptive
5 rights...” (Emphasis added)

6 Paragraph 45: “Public Water Suppliers seek a judicial determination as to the correctness
7 of their contention and a finding as to priority and amount of water they and each cross-
8 defendant are entitled to pump from the basin.” (Emphasis added)

9 The value of the claim for prescription is significant.² No other claim or
10 defense in this case presents an equal challenge for the class. Elements of
11 prescription include notice, adversity, and continuity of use all of which raise
12 questions of fact for the jury. Yield and overdraft are two component elements of
13 prescription. All the elements of prescription should be tried to the jury. Splitting
14 the cause of action would have the following effect: (1) undue delay toward an
15 ultimate resolution of the case; (2) undue delay toward any potential for settlement;
16 (3) cause inordinate amount of time and expense for class counsel; and (4) cause
17 duplication in deposition discovery. A trial solely as to yield and overdraft would
18 indeed yield very little to the class cases and would defer the most critical aspect of
19 the case.

20 II. 21 Points and Authorities

22 1. Willis has a right to a jury trial

23 The right to a jury trial is found in both the California Constitution and
24 California statute. Article 1, section 16, of the California Constitution provides that

25 ¹ A tenth (10th) public water supplier recently filed an answer and cross-complaint seeking rights by
26 prescription, Phelan Pinon Hills Community Services District (“Phelan”). In its complaint Phelan
demanded a trial by jury.

27 ² Assuming one acre foot of water is worth \$500, the taking of 20,000 acre feet of groundwater
28 amounts to \$10,000,000 in value per year. If taken in perpetuity, the present value is significantly
larger.

1 “Trial by jury is an *inviolable* right and shall be secured to all...” By statute,
2 the California Code of Civil Procedure section 592 provides: “In actions for the
3 recovery of specific, real, or personal property, with or without damages, or
4 for money claimed as due upon contract, or as damages for breach of contract,
5 or for injuries, an issue of fact must be tried by a jury, unless a jury trial is
6 waived, or a reference is ordered as provided in this Code. Where in these
7 cases there are issues both of law and fact, the issue of law must be first
8 disposed of. In other cases, issues of fact must be tried by the Court, subject
9 to its power to order any such issue to be tried by a jury, or to be referred to a
10 referee, as provided in this Code.”

11 In determining whether the action is one triable by a jury, the court is *not*
12 *bound by the form of the action but rather by the nature of the rights involved* and
13 the facts of the particular case- i.e. the gist of the action. (*DiPirro v. Bondo Corp.*
14 (2007) 153 Cal.App. 4th 150) A jury trial must be granted where the gist of the
15 action is legal, where the action is in reality cognizable at law. (*People v. One 1941*
16 *Chevrolet Coupe* (1951) 37 Cal. 2d 283; accord, *Frahm v. Briggs* (1970) 12 Cal. App.
17 3d 441) On the other hand, equitable issues are to be resolved by the court sitting
18 without a jury. (*Abbott v. City of Los Angeles* (1958) 50 Cal. 2d 438, 462) Where
19 legal and equitable issues are joined in the same action the parties are entitled to a
20 jury trial on the legal issues.” (*Robinson v. Puls* (1946) 28 Cal.2d 664) Unwarranted
21 denial or curtailment of the right to a jury trial is not only reversible error but is
22 also an act in excess of jurisdiction, subject to restraint by prohibition. (*People,*
23 *supra*, at 300)

24 In this case, the Willis class is defending against a common law legal claim of
25 *prescription* - a claim that may strip or diminish the class of their water rights. The
26 class requested a trial by jury and demanded that right. The fact that the class is
27 legally entitled to a trial by jury regarding this claim is not in dispute. An action to
28 establish the existence of a prescriptive easement on real property is jury triable

1 [Arciero Ranches v. Meza (1993) 17 CA4th 126) - common law remedy was an
2 “action on the case” triable by jury] All aspects of the claim should be tried to a jury
3 in 2009 as splitting the cause of action would cause delay, confusion, and
4 inefficiency.

5 **2. Willis has not waived her right to trial by jury**

6 In general there is no particular form to demand a jury trial by statute or
7 court rule. A demand may be made in a pleading or in a case management
8 statement. [7 Witkin, Cal. Procedure (5th ed.2008) Trial, section 98] Here, the Willis
9 class made a demand for a jury on the face of its Second Amended Complaint and
10 has not since waived its rights.

11 Waiver is circumscribed by the code. In a civil cause a jury may be waived by
12 the consent of the parties expressed as prescribed by statute. Code of Civil
13 Procedure section 631, subdivisions (a) and (d) provide in part: “In civil cases, a jury
14 may only be waived pursuant to subdivision (d). Subsection (d) provides: A party
15 waives trial by jury in any of the following ways: (1) By failing to appear at the trial.
16 (2) By written consent filed with the clerk or judge. (3) By oral consent, in open
17 court, entered in the minutes. (4) By failing to announce that a jury is required, at
18 the time the cause is first set for trial, if it is set upon notice or stipulation or within
19 five days after notice of setting if it is set without notice or stipulation. (5) By failing
20 to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b).
21 (6) By failing to deposit with the clerk or judge, at the beginning of the second and
22 each succeeding day's session, the sum provided in subdivision (c).” These methods
23 constitute the exclusive modes of waiver in civil cases.

24 One public entity, the City of Los Angeles, a landowner that enjoys immunity
25 from prescription, advanced an argument under subsection (d) (4), i.e. failure to
26 request it at the time the cause was first set for trial. That argument must fail
27 against the Willis class. Under that proposition, the Willis class would have had to
28 request a jury trial sometime before October 10, 2006, the date the case was first set

1 for trial. The Willis class however was not a party to the litigation at the time the
2 first phase was tried and therefore could not have requested a jury trial.

3 Alternatively the City of Los Angeles might argue that the certified class
4 became a party to these coordinated cases in January 11, 2007 and therefore was
5 present during the phase two trial and should have re-confirmed its demand for a
6 jury trial. For the following reasons this argument also fails: (1) the Willis class
7 could not actively participate in the phase 2 trial as the phase involved potentially
8 conflicting issues among the class members; (2) the phase was procedural and
9 jurisdictional in nature and did not affect substantive rights of class members; and,
10 (3) due to the delay of the public water suppliers, the class did not have notice of
11 action or an opportunity to opt out and therefore cannot be properly bound by the
12 trial findings. (*See Civil Service Employees Insurance v. Superior Court*, (1978) 22
13 Cal. 3d 362) Over 70,000 landowners had no knowledge of these proceedings and
14 should not now be denied their right to a jury trial.

15 Thus, as a matter of constitutional right, the Willis class is entitled to a jury.
16 It has long been held in this state that a jury trial may not be waived by
17 implication; it may only be waived affirmatively and in the manner designated by
18 the provisions of section 631, Code of Civil Procedure. (*City of Redondo Beach v.*
19 *Kumnick* (1963) 216 Cal.App.2d 830, 835) The Willis class has not waived its right to
20 trial by jury. In light of the importance of the jury trial in our system of
21 jurisprudence, any waiver thereof should appear in clear and unmistakable form.
22 Where it is doubtful whether a party has waived his or her constitutionally
23 protected right to a jury trial, the question should be resolved in favor of preserving
24 that right. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 804)

25 **3. Even if the court finds a waiver, relief is liberally granted**

26 Even where there has been a waiver of the right to jury trial, the court “may,
27 in its discretion upon just terms” allow a jury trial. (CCP § 631(e); *Johnson-Stovall*
28 *v. Sup.Ct. (A-M Homes, Inc.)* (1993) 17 CA4th 808, 810, 21 CR2d 494, 495) Although

1 relief is discretionary, “as a general rule, a party should be relieved from a
2 stipulation waiving a jury, where the same can be done without injury to the other
3 side, and without disarraying the orderly conduct of the business of the court.”
4 (*Ferrea v. Chabot* (1898) 121 C 233, 235) The rationale behind the rule is that “The
5 right to trial by jury is a basic and fundamental part of our system of jurisprudence
6 ... In case of doubt, therefore, the issue should be resolved in favor of preserving a
7 litigant's right to trial by jury.” (*Byram v. Sup.Ct. (Lakewood)*, (1977) 74 CA3d 648)

8 “Serious hardship” to the opposing party is reason to deny a motion for relief
9 from jury waiver. (*Boal v. Price Waterhouse & Co.*, (1985) 165 CA3d 806) The
10 prejudice which must be shown to justify such denial is *prejudice from granting*
11 *relief* from the waiver, as opposed to prejudice from a jury trial. [*Gann v. William*
12 *Bros. Realty, Inc.* (1991) 231 CA3d 1698, 1704; *Johnson-Stovall v. Sup.Ct. (A-M*
13 *Homes, Inc.)* (1993) 17 CA4th 808, 810) - “mere fact that trial will be by jury is not
14 prejudice per se”].

15 Here, any party advocating waiver will not be able to show serious hardship.
16 Discovery has advanced very little since it commenced in or about May, 2008. No
17 percipient witness has been deposed on safe yield, overdraft, and notice. No expert
18 witness has been deposed on the merits of the claim. Documents remain to be
19 produced by all the public water suppliers. A document depository has not been
20 established. Notice to the class was only recently disseminated. Interestingly, a
21 new public water supplier recently appeared claiming a right by prescription and
22 demanding a trial by jury. Because the case is in its early stages of merit
23 proceedings, there is no prejudice to those parties that seek to deny the
24 fundamental right of a trial by jury to all the landowners.

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**III.
Conclusion**

The court should affirm the Willis class' right to trial by jury. Rebecca Willis and the class of potentially 70,000 landowners made a demand for a jury trial and the demand was never waived.

Dated: January 2, 2009

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