

RICHARD G. ZIMMER - SBN 107263
T. MARK SMITH - SBN 162370
JEREMY J. SCHROEDER - SBN 223118
CLIFFORD & BROWN
A Professional Corporation
Attorneys at Law
Bank of America Building
1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301-5230
(661) 322-6023 (tel)
(661) 322-3508 (fax)

Attorneys for WM. BOLTHOUSE FARMS, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

COORDINATION PROCEEDING)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b)))	Proceeding No. 4408
)	
ANTELOPE VALLEY GROUNDWATER)	CASE NO. 1-05-CV-049053
CASES)	
)	
INCLUDED ACTIONS:)	
)	
LOS ANGELES COUNTY WATERWORKS)	
DISTRICT NO. 40 v. DIAMOND)	OPPOSITION TO DEMURRER OF
FARMING COMPANY, et al.,)	SHELDON R. BLUM, TRUSTEE, TO
Los Angeles Superior Court)	SECOND AMENDED COMPLAINT OF
Case No. BC325201)	WM. BOLTHOUSE FARMS, INC.
)	
LOS ANGELES COUNTY WATERWORKS)	
DISTRICT NO. 40 v. DIAMOND)	
FARMING COMPANY, et al.,)	
Kern County Superior Court)	
Case No. S-1500-CV-254348)	
)	
DIAMOND FARMING COMPANY, and)	
W.M. BOLTHOUSE FARMS, INC., v.)	
CITY OF LANCASTER, et al.,)	
Riverside Superior Court)	
Case No. RIC 344436 [c/w case no.)	
RIC 344668 and 353840])	
)	
ROSAMOND COMMUNITY SERVICES)	
DISTRICT,)	
CROSS-COMPLAINANT,)	

1 Plaintiff/Cross-Defendant, WM. BOLTHOUSE FARMS, INC.
2 (hereinafter "BOLTHOUSE FARMS"), hereby submits its Opposition to
3 Demurrer of Sheldon R. Blum Trustee (hereinafter "BLUM"), to the
4 Second Amended Complaint of WM. BOLTHOUSE FARMS, INC.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I**

7 **BLUM IS NOT A DEFENDANT TO THE SECOND AMENDED COMPLAINT**

8 BLUM filed the instant Demurrer without standing to do so
9 and upon a patent misunderstanding of the thrust and target of
10 the pleading attacked. The Second Amended Complaint (hereinafter
11 the "SAC"), like its predecessors, sought to quiet title to
12 BLOTHOUSE FARMS' interests, both leasehold and fee, to certain
13 identified parcels against *certain municipal purveyors only*. The
14 SAC asserts no rights adverse to BLUM as an overlying landowner,
15 so he is not a defendant and cannot, therefore, attack the SAC by
16 demurrer. On this simple ground alone, BLUM'S Demurrer, in its
17 entirety, should be overruled. BLUM'S angst is misdirected, and
18 should be aimed at the parties who seek to impair his overlying
19 landowner rights, the municipal purveyors by way of their Cross-
20 Complaint against anyone claiming water rights in the Antelope
21 Valley.

22 ///

23 ////

24 ////

25 ////

26 ////

II

JUDICIAL NOTICE OF THE LEASE IS IMPROPER

[*Demurrer § 1.*]

Despite BLUM'S claim that the lease between Sheldon Blum (as an individual) and WM. BOLTHOUSE FARMS, INC. dated August 2, 2001 (hereinafter the "Lease") is "of such common knowledge within the territorial jurisdiction of this Court that it cannot be the subject of dispute[,] " judicial notice cannot be taken of the document. As appropriately cited by BLUM, *Code of Civil Procedure § 430.30* provides that a demurrer is appropriate only upon that which appears on its face, or upon that which the court is required to or may take judicial. (*Code Civ. Proc. § 430.30(a)(b)*) "If there is any doubt whatever either as to the fact itself or as to its being a matter of common knowledge, evidence should be required." (Barreiro v. State Bar, (1970) 2 Cal.3d 912, 925) How a lease agreement between private parties is "of such common knowledge" to this Court is not stated by BLUM, for it cannot be so stated with any degree of good faith. The Lease should be disregarded, as should all references thereto in the Demurrer.

BLUM'S request for judicial notice is also procedurally defective in that it is not made in a separate document as required by *Rule of Court 3.1306(c)*. Additionally, Sheldon R. Blum's attached Declaration is improper material outside the "four corners" of the pleading, and should likewise be disregarded on demurrer. (*Code Civ. Proc. § 430.30(a)(b)*)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III

REAL PARTY IN INTEREST

[Demurrer § 5.A.]

BLUM clearly fails to recognize that WM. BOLTHOUSE FARMS, INC. and BOLTHOUSE PROPERTIES, LLC are separate entities with independent rights at-issue in the coordinated action. Whether the allegations presented by WM. BOLTHOUSE FARMS, INC. in its Second Amended Complaint and those alleged in BOLTHOUSE PROPERTIES, LLC'S Cross-Complaint conflict is of no consequence because the entities clearly cannot hold equal rights. Accordingly, the commonality of the entities respective allegations, or their counsel, is not a sufficient ground for demurrer pursuant to *Code of Civil Procedure* § 430.10.

IV

LESSOR VS. LESSEE RIGHTS

[Demurrer § 5.B.-D.]

BLUM cites several authorities for the proposition that a lessee cannot take from his lessor by adverse possession. (Schwarzbaugh v. Sampson, (1936) 11 Cal.App.2d 451; Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court, (2007) 148 Cal.App.4th 39; *Civil Code* § 1006) BLUM further cites to authority establishing that an overlying landowner has paramount rights to subsurface water beneath his property. (City of Barstow v. Mojave Water Agency, (2000) 23 Cal.4th 1224) While BOLTHOUSE FARMS acknowledges that the above authorities, and the propositions asserted by them, are instructive law, they have no

1 bearing on the allegations of the SAC because BOLTHOUSE ARMS
2 asserts no claim of right to water beneath BLUM'S property
3 paramount or adverse to BLUM.

4 A lessee of BLUM'S parcels is free to assert rights to
5 subsurface waters to which his lease grants him use. Such a
6 claim of right asserted by a lessee is not paramount to his
7 lessor, but rather, is subservient and founded upon the rights
8 conferred by the lease. Accordingly, the SAC need not assert
9 allegations specific to BLUM to establish its quiet title claim
10 against the municipal purveyors. Additionally, the ultimate
11 determination of rights to waters underlying parcels identified
12 by both WM. BOLTHOUSE FARMS, INC. and BOLTHOUSE PROPERTIES, LLC
13 will be in conformity with the authority cited by BLUM and not
14 adverse to his rights as an overlying landowner.

15 **V**

16 **THERE IS NO DEFECT OR MISJOINDER OF PARTIES**

17 **[Demurrer § 6.]**

18 The SAC does not claim rights superior to BLUM. As set forth
19 above, BOLTHOUSE FARMS acknowledges that its rights to water as a
20 lessee are subordinate and dependent upon the rights of the
21 lessor. The SAC asserts rights adverse to the municipal
22 purveyors, not overlying landowners. Accordingly, BLUM need not
23 be added as a DOE defendant by BOLTHOUSE FARMS for he is not an
24 interested or indispensable party to the SAC. There is no defect
25 or nonjoinder issue, so demurrer under *Code of Civil Procedure §*
26 *430.10(d)* is not properly asserted.

VIII

ATTORNEY'S FEES ARE NOT APPROPRIATE

[*Demurrer* § 9.]

BLUM'S request for judicial notice of the Lease is ineffective as set forth above, so the court need not reach the issue of attorney's fees thereunder. Even if the court could take judicial notice of the Lease, the *Civil Code* § 1717 argument asserted by plaintiff is absurd. Under *Civil Code* § 1717(a) contractual attorney's fees are recoverable only upon the enforcement of the contract, which is not the case here on *Demurrer*. Pursuant to *Civil Code* § 1717(b) BLUM must be successful on his *Demurrer*, then file a motion with the court seeking a determination of who the prevailing party on the contract is and fixing reasonable fees under the contract. BLUM'S request should be summarily denied.

\\

\\

\\

\\

\\

\\

\\

\\

\\

\\

\\

IX

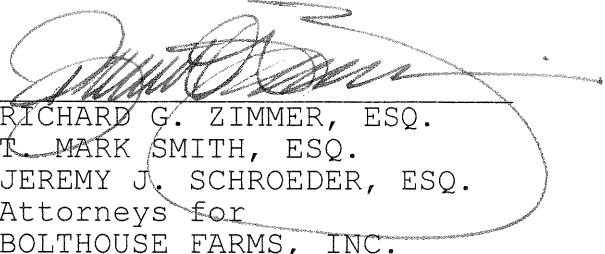
CONCLUSION AND REQUEST FOR RELIEF

WM. BOLTHOUSE FARMS, LLC. respectfully requests that BLUM'S request for judicial notice be denied, that the materials attached to the Demurrer be disregarded and that each ground for demurrer set forth therein be overruled.

DATED: January 25, 2008

CLIFFORD & BROWN

By:


RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
JEREMY J. SCHROEDER, ESQ.
Attorneys for
BOLTHOUSE FARMS, INC.

*Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053*

On January 25, 2008, I served the foregoing document(s) entitled:

Nanette Maxey
NANETTE MAXEY
2450-37