

**LAW OFFICES OF
SHELDON R. BLUM**

2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-7320
FAX: (408) 377-2199
STATE BAR NO. 83304

**Attorney for 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:
MOTION TO DISMISS & MOTION TO
STRIKE 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
Time: 10:00 a.m.
Dept.: 1

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Kern County Superior Court
Case No. S-1500-CV-254-348

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 Palmdale Water District.

Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

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

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

I. INTRODUCTION

BLUM TRUSTEE filed Motions seeking the following orders: (1) Dismissing the action as to BLUM TRUSTEE on the grounds that Plaintiff's Second Amended Complaint (hereinafter "SAC") fails to state facts sufficient to constitute a cause of action against BLUM TRUSTEE (Cal. Civ. Code § 1006; Cal Civ. Proc. § 435(b); (2) Dismissing the action as to BLUM TRUSTEE on the ground that Plaintiff has not served the Summons and SAC on BLUM TRUSTEE within three (3) years after the commencement of the action, and on the additional ground that the action is barred by the doctrine of Laches (Cal Code Civ. Proc. §§ 389, 474, 583.210, 583.250, 762.010, 762.060); (3) Striking the SAC in its entirety on the ground that it is not drawn in conformity with the law, or alternatively, (4) Striking certain portions of the SAC on the grounds that those matters are irrelevant, false, improper, and not drawn in conformity with the law (Cal. Civ. Proc. §§ 435, 436); and (5) Awarding attorney fees and other costs of suit to BLUM TRUSTEE as provided under the Lease Agreement between the parties, under Exhibit "B", to the Demurrer of SAC (Cal. Civ. Code § 1717, Cal. Civ. Proc. § 1033.5(a)(10)(A)).

Plaintiff BOLTHOUSE FARMS filed opposition to the Motions stating: (1) BLUM TRUSTEE has no standing to file a Motion to Dismiss and/or a Motion to Strike the SAC; since he is not a defendant in the action, a DOE defendant, an indispensable or interested party to the action; (2) Lessee Plaintiff asserts no claim of right to water beneath Lessor BLUM'S property paramount or adverse to BLUM, but rather are subservient and founded upon the rights conferred by the lease; (2) The supporting Declaration of BLUM TRUSTEE is improper material and should be disregarded; (3) Judicial Notice of the Lease Agreement and the contractual issue of attorney fees

is improper, and should not be addressed herein.

II. LEGAL ANALYSIS

1. THE SAC CLEARLY IDENTIFIES BLUM TRUSTEE AS A DEFENDANT WHICH REQUIRED BOLTHOUSE FARMS TO TIMELY SERVE THE SUMMONS & SAC ON BLUM TRUSTEE AS A MATTER OF LAW.

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

BOLTHOUSE FARMS action seeks to Quiet Title to its alleged superior priority of overlying water rights on each "PARCEL" identified in Exhibit "A", in connection with its farming operations on "PROPERTIES" it owns and leases. BOLTHOUSE FARMS further alleges that "plaintiff's overlying water rights" are superior to any rights defendants may have to take groundwater for non-overlying use", and that "the claim of each defendant to superior or coequal rights to extract and use groundwater is without basis in law or equity". (SAC Pg. 4 ¶ 8, ¶10, ¶12, Pg. 5 ¶ 14).

Under a misconception of the law, BOLTHOUSE FARMS failed to name and serve any of the targeted "LEASED" fee record owners, and disingenuously claimed to be ignorant of the true names and capacities of "All Persons Unknown Claiming Any Legal Or Equitable Right, Title, Estate, Lien, Or Interest in the PROPERTIES Described In This Complaint Adverse to Plaintiff's Title, Or Any Cloud Upon Plaintiff's Title Thereto." (SAC Pg. 3 ¶ 6).

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

1 Plaintiff's proposition that it was under no legal obligation to serve the Summons and
2 SAC on BLUM TRUSTEE as a indispensable or interested party or otherwise within the above-
3 stated classification of a "Person Unknown Claiming Any Legal Or Equitable Right, Title, Estate or
4 Interest", or as a DOE defendant is faulty and misplaced, as a matter of fact, procedural and
5 substantive law.

6 Immediate action by BLUM TRUSTEE was necessary to file the instant Motions, based
7 on being clearly identified in the SAC, Exhibit "A", and either named as a fictitious individual, or
8 otherwise as a matter of law, should have been compulsory or permissively joined in the SAC
9 action. The action in essence is a pending action against the BLUM PARCELS, and to third
10 parties, establishes a perceived cloud or encumbrance on BLUM TRUSTEE'S title. Under Cal.
11 Civ. Proc. Code § 761.010, Plaintiff was also required to file a notice of the pending action in the
12 County Recorders Office where the real property in the SAC is located. Plaintiff asserts
13 competing and frivolous claims against the BLUM PARCELS water rights and represents a default
14 under the lease and an injustice and inequity of the BLUM TRUSTEE'S 116 agriculture acres,
15 under the California priority water system.
16

17 If it were true that BLUM TRUSTEE has no standing, the inequities from BOLTHOUSE
18 FARMS unbridled actions would continue unabated, as well as the taking of the BLUM PARCELS
19 without due process of law and without just compensation. Furthermore, any adjudication of
20 BOLTHOUSE FARMS purported leasehold water right claims arising out its farming operations on
21 the BLUM PARCELS without BLUM TRUSTEE as a party thereto, would grant permission for
22 Plaintiff to unfairly manipulate the California priority water allocation system. Plaintiff's farming
23 conduct is within the classification of 'appropriative use' of water and not 'overlying use' of water
24 on the BLUM PARCLES, since it delivers the groundwater from another parcel. (*City of Barstow v.*
25

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

1 mandatory dismissal/strike order consistent with his moving papers.

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

5 Plaintiff BOLTHOUSE FARMS requests that Judicial Notice be denied and that this
6 Court disregard the Exhibit "B" Lease Agreement as improper material, devoids its SAC Quiet
7 Title allegations concerning water rights arising out of its farming operations on the BLUM
8 PARCELS.

9 Plaintiff's "basis of title" is obviously exclusively predicated on the terms and conditions
10 of the Lease Agreement, which represents the "Best Evidence" to establish an essential element
11 to a Quiet Title action. (Cal. Civ. Prod. § 761.020(b)). Without mandatory or permissive Judicial
12 Notice of the Lease Agreement and/or consideration of the lease terms under Exhibit "B",
13 Plaintiff's conclusions of law render the SAC fatally defective and uncertain, and fails to state facts
14 sufficient to constitute a cause of action for Quiet Title against BLUM PARCELS. Likewise, it
15 cannot be ascertained from the pleadings whether Plaintiff's water rights are founded upon a
16 lease that is written, oral or is implied by conduct. (Cal. Civ. Proc. Code § 430.10(f)). Judicial
17 Notice is also warranted as the grounds for the objection to the SAC appears from the express
18 terms of the Lease Agreement (Cal. Civ. Proc. § 430.30(a)).

19
20 BLUM TRUSTEE'S request for attorney fees herein is also proper as the Lease
21 Agreement provides for the same; the contract was properly referenced and attached to the
22 Demurrer to the SAC, as Exhibit "B", and were incurred to enforce the terms of the contract and/or
23 to indemnify Lessor's economic resource time by having been compelled to file this herein
24 Motions. (See Ex. "B" Pg. 6, ¶9A. Indemnification; and Pg. 10 ¶ 15(c) Attorney Fees).
25 Additionally, the Declaration of Sheldon R. Blum is proper material under Rules of Court, Rule

1 3.1112(b), and remains unopposed. Rules of Court, Rule 3.112 (a) & (b), expressly provides:

2 **(a) Motions required papers**

3 Unless otherwise provided by the rules in this division,
4 the papers filed in support of a motion must consist of at
5 least the following:

- 6 (1) A notice of hearing on the motion;
7 (2) The motion itself; and
8 (3) A memorandum in support of the motion or demurrer.

9 **(b) Other papers**

10 Other papers may be filed in support of a motion, including
11 declarations, exhibits, appendices and other documents and
12 pleadings. (Emphasis added).

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

14 Despite Plaintiff's current disavowal of claims, BOLTHOUSE FARMS filed opposition
15 either remains unresponsive or without including necessary points and authorities to support its
16 propositions. Based on the foregoing, Defendant BLUM TRUSTEE respectfully requests that this
17 court enter its mandatory order dismissing the entire verified SAC, or alternatively, dismissal as to
18 BLUM TRUSTEE and the BLUM PARCLES, and striking the attached Exhibit "A", at Page 5,
19 which references "Sheldon R. Blum (LEASED), 116.29 ACRES", property legal description and
20 APN. BLUM TRUSTEE further requests an award for his attorney fees and other costs of suit.

21 DATED: February 5, 2008

LAW OFFICES OF SHELDON R. BLUM

22 By: 

23 SHELDON R. BLUM, Esq.

24 Attorney For SHELDON R. BLUM, TRUSTEE

25 For The SHELDON R. BLUM TRUST