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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

DAVID GURNEY,

Plaintiff and Appellant,

v.

MARINE LIFE PROTECTION ACT
INITIATIVE,

Defendant and Respondent.

A132856

(Mendocino County
Super. Ct. No. SCUKCVG1057448)

The trial court granted the motion of respondent Marine Life Protection Act Initiative (MLPAI) to quash appellant David Gurney's service of summons. Gurney appeals, contending that the MLPAI is a jural entity subject to suit. We affirm the order to quash.

I. FACTS¹

Appellant David Gurney is a Mendocino video journalist. In January and April 2010, he attended three MLPAI meetings held in Fort Bragg. He attempted to videotape the meetings and to offer comments. He was prevented from doing so, under conditions that he later alleged were illegal, intimidating and coercive. During the third meeting, he was arrested and cited for two misdemeanors. Later, one charge was dropped; the district attorney declined to prosecute the other charge. Gurney's governmental claim for damages was denied in October 2010.

¹ On appeal, the parties have stipulated to use the superior court file as the record of trial court proceedings. (Cal. Rules of Court, rule 8.128(a)(1).)

In December 2010, Gurney filed an action for violation of his civil rights, false imprisonment, negligence and declaratory relief against the state Department of Fish and Game (DFG), the California Natural Resources Agency (CNRA), and three individual defendants. He also purported to sue the MLPAI. In his action, he sought compensatory and punitive damages, as well as declaratory relief. In early March 2011, the DFG, the CNRA and the individual defendants answered the complaint.

On March 22, 2011, Gurney's process server served Melissa Miller-Henson—a DFG employee who is the MLPAI's program manager—with a copy of the complaint and summons in this action. He asserted that she was an agent authorized to accept service of process for the MLPAI. Despite Miller-Henson's explanation that the MLPAI was not an organization that could be sued, she was served with these documents. The proof of service described the MLPAI as an association or partnership. (See Code Civ. Proc., § 416.40.)

In April 2011, the MLPAI—appearing specially—moved to quash service of summons for lack of jurisdiction. The motion argued that the MLPAI was a project, not a jural entity capable of suing and being sued. Gurney opposed the motion. After a May 2011 hearing on this motion, the trial court ruled in the MLPAI's favor, finding that the MLPAI was not an entity subject to suit. Service on Miller-Henson was declared to be null. A month later, an order quashing service of summons to the MLPAI was entered.

II. JURAL ENTITY

A. Legal Principles

Gurney contends that the MLPAI is a partnership which fairness requires to be subject to civil action. He reasons that the MLPAI is an unincorporated association, making it a jural entity for purposes of suing and being sued. The trial court specifically found that the MLPAI did not constitute an unincorporated association.

The social and economic realities of present-day society rest on group structures of many types. In order to operate successfully, these groups must be able to bring legal actions and must be liable to suit themselves. (*Daniels v. Sanitarium Assn., Inc.* (1963) 59 Cal.2d 602, 607-608; *Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259,

265 (*Barr*.) By definition, an entity is a jural entity subject to suit if it is a group whose members share a common purpose, and if those members function under a common name under circumstances in which fairness requires that the group be recognized as a legal entity. (*Barr, supra*, at p. 266.) Any partnership or unincorporated association—whether or not organized for profit—is such a jural entity, because it may sue and be sued in the name which it has assumed or by which it has come to be known. (Code Civ. Proc., § 369.5, subd. (a).)

State law allows service of process to be made on an agent on behalf of an unincorporated association, including a partnership. (Code Civ. Proc., § 416.40.) As there are no factual disputes in this appeal, the issue of whether the MLPAI is a jural entity is a question of law that we decide anew on appeal. (See *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38; *Barr, supra*, 90 Cal.App.3d at pp. 263-264.)

B. *Nature of the MLPAI*

Our analysis of whether the MLPAI is a jural entity turns on an understanding of the true nature of the MLPAI. In 1999, the Legislature enacted the Marine Life Protection Act (Act), seeking to develop a more coherent plan to protect California's many, varied marine protected areas. (Fish & G. Code,² §§ 2850-2863; see *Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1191-1192 (*Coastside*.) The Act charges the Fish and Game Commission and the DFG—supervised by the CNRA³—with various duties. (See §§ 30, 37, 2855, 2856.) However, state funding proved to be inadequate to these tasks. (*Coastside, supra*, 158 Cal.App.4th at pp. 1189, 1198.) In August 2004, the predecessor to the CNRA and the DFG entered into a memorandum of understanding with a private nonprofit foundation—the Resources

² All statutory references are to the Fish and Game Code unless otherwise indicated.

³ What was formerly known as the California Resources Agency is now named the California Natural Resources Agency. (Gov. Code, §§ 12800, 12802, subd. (a), 12805, subd. (a); see Stats. 2008, ch. 205, §§ 1-2, 4.)

Legacy Fund Foundation (RLFF)⁴—to facilitate implementation of the Act. That memorandum of understanding created the MLPAI as a “public-private partnership” providing resources needed to implement those goals. (*Id.* at pp. 1188-1189.)

The Act charges the Fish and Game Commission to adopt a master plan to implement the Act’s goals. (§ 2855, subd. (a); *Coastside, supra*, 158 Cal.App.4th at p. 1192.) Under the memorandum of understanding, an appointed group of unpaid advisors serve as an MLPAI Task Force overseeing preparation of the draft master plan. Publicly noticed, open meetings—such as the ones Gurney attended—are part of this master plan development process. The MLPAI Task Force is supported by employees of the CNRA and the DFG, and funded by the RLFF. Since 2007, Melissa Miller-Henson has served as program manager of the MLPAI Task Force, although she remains an employee of the DFG.

The MLPAI is not a state agency, nor is it incorporated. It has no officers, members or associates. The memorandum of understanding creating the MLPAI specifically provides that it does not create a partnership or trust relationship between the parties. The CNRA, the DFG and the RLFF created the MLPAI, which was not a party to the memorandum of understanding, but the result of it.

C. Discussion

Our analysis of the relevant authorities satisfies us that the MLPAI is not a jural entity subject to suit. It is not a group whose members share a common purpose, but is a program or set of objectives. (See *Barr, supra*, 90 Cal.App.3d at p. 266.) Neither is the MLPAI a partnership or unincorporated association within the meaning of California law.

⁴ The RLFF administers the Resources Legacy Fund, which receives grants from private institutions and individuals who wish to assist in the conservation and restoration of marine systems. Operating as public charities, both the fund and its foundation make grants or loans to conserve land, water, and marine resources. (See 26 U.S.C. § 501(c)(3); *Coastside, supra*, 158 Cal.App.4th at p. 1189 fn. 1.)

(Code Civ. Proc., § 369.5, subd. (a).) Describing the MLP AI as a “public-private partnership” does not elevate this program to a formal partnership.⁵

Finally, this is not a case in which fairness requires that the MLP AI be recognized as a legal entity, because its administrating entities—the DFG and the CNRA—are subject to the underlying action. (See *Barr, supra*, 90 Cal.App.3d at p. 266.) Those two agencies have filed an answer to Gurney’s complaint, acknowledging that they come within the jurisdiction of the court for purposes of determining his action. The issues that he raises challenging the MLP AI and the activities undertaken pursuant to that program will be before the trial court in the action against the DFG, the CNRA and the three individual defendants. The trial court correctly concluded that the MLP AI is not a jural entity capable of being sued.⁶

The order quashing service of summons is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.*

⁵ We note that in the pivotal case describing and challenging the MLP AI, the plaintiff sued the predecessor of the current CNRA, the DFG and the RLFF, but not the MLP AI itself. (See *Coastside, supra*, 158 Cal.App.4th at pp. 1188-1189.)

⁶ In light of this conclusion, we need not consider the alternative ground that the MLP AI offered to the trial court for quashing service of summons—whether Gurney failed to comply with statutory requirements for service of process on an authorized agent.

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.