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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

HANSEN'S TRUCK STOP, INC., et al.,

Plaintiffs and Appellants,

v.

THE PEOPLE ex rel. CALIFORNIA
DEPARTMENT OF
TRANSPORTATION,

Defendant and Respondent.

A135827

(Humboldt County
Super. Ct. No. DR 100239)

The State of California, acting through its Department of Transportation, filed an eminent domain action with respect to certain property (“the property”) along U.S. Highway 101 in Humboldt County for the purpose of building the Highway 101/Route 36 Alton Interchange. The property was part of a larger parcel that was owned by various persons and entities (collectively, “the Hansens”¹). The Hansens owned and operated a truck stop on the larger parcel. The property to be condemned had access rights to a frontage road at a specific location that, in turn, provided access to U.S. Highway 101;

¹ On our own motion we take judicial notice of the record on appeal in that eminent domain action, *People v. Hansen's Truck Stop, Inc. et al.*, A133252. Numerous defendants were named in the eminent domain action, but only two appealed from that judgment. They are Hansen's Truck Stop, Inc., and Charles F. Hansen, Jr., Trustee of the Charles and Imogene Hansen Trust No. 1 U/T/D Feb. 1, 1979, who are also the plaintiffs in this action.

these access rights had been accorded to the Hansens by the State pursuant to a stipulated judgment entered into between the parties in 1986.

While the condemnation action was pending, the Hansens filed a breach of contract action alleging the State's construction of its Highway 101 improvement project was a breach of the 1986 stipulated judgment granting access rights. The State brought a motion for summary judgment, contending that the State could not, and did not, relinquish its power of eminent domain in the 1986 stipulated judgment; therefore, the condemnation legally extinguished the access rights and was not a breach of any obligation to the Hansens. The trial court agreed, and ordered that judgment be entered in favor of the State. The Hansens appealed, and we shall affirm the judgment.²

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Stipulated Judgment

In 1986 the parties were involved in a legal dispute pertaining to the property, which resulted in a stipulated judgment. That stipulation provided, among other things, that the State would provide “a 100-foot wide Sandy Prairie Road access opening..., provide acceleration/ deceleration lanes to and from [S]tate [H]ighway [R]oute U.S. 101 at its point of intersection with the access opening, [and] provide channelization within U.S. 101 for movements into and out of the new access opening....” The parties also agreed that “[the State] shall provide [the Hansens] with the necessary property access rights to the proposed access opening at Sandy Prairie Road, and [the Hansens] shall provide [the State] with necessary property rights for the construction and maintenance of the proposed road improvements at Sandy Prairie Road.”

² The Hansens requested that we take judicial notice of a case management statement and a proposed amended answer. These requests are moot because these documents are contained in the record of the related appeal, of which we have taken judicial notice in its entirety. We previously granted the Hansens' request for judicial notice of the State's Motion in Limine No. 10 and the court's minutes reflecting the ruling on the motion, without a determination of relevance. We have read and considered the documents, and affirm our previous ruling granting judicial notice.

B. The Eminent Domain Action

In 2007, the State filed an action in eminent domain to condemn part of the larger parcel owned by the Hansens in order to construct an interchange. In their Answer, the Hansens alleged that the taking would substantially impair their access to Highway 101, “including access rights adjudicated in favor of [the Hansens] and against [the State] on August 14, 1986 in [the prior lawsuit],” and sought additional compensation for that impairment of access.

The State requested a bench trial on the predicate issue of whether the Hansens could establish entitlement to any damages for impairment of access. There being no objection from the Hansens, a court trial was held on the issues of “whether [the State’s] project will cause a substantial impairment to [the] property’s access, and whether [the Hansens] are entitled to claim business goodwill compensation.” The record of that trial is not before us.³

In post-trial briefing, the State argued there was no substantial impairment of access because the 1986 stipulated judgment, and a subsequent deed conveying to the Hansens a “right of access” across State-owned property, did not confer any access rights *to Highway 101*. Rather, the State argued, “[t]he 1987 deed simply perpetuated [the Hansens’] right to access Sandy Prairie Road [and]...did not grant defendants any access rights in and to the traveled way of Highway 101 itself.” The State also took issue with the Hansens’ claim that in the stipulated judgment “the State agree[d] to maintain certain elements of Highway 101 for defendants’ special, and perpetual, benefit.” This, the State argued, is not supported in the language of the stipulation and, in any event, would be an impermissible gift of public funds.

The Hansens, in their post-trial brief, argued that “[t]he 1986 stipulated judgment contract very clearly...intended to and did grant *new* access rights to Hansen to Highway

³ Apparently, the parties filed four pre-trial briefs on the impairment of access issue, but these also were not included in the appellate record.

101, then a freeway.” It was the Hansens’ position that the judgment granted the Hansens direct access to Highway 101 by providing the 100-foot wide Sandy Prairie Road access opening, in an agreed-upon location, and providing acceleration and deceleration lanes to and from the Highway at the point of intersection with the opening. In response to the State’s argument that the grant was not “in perpetuity,” the Hansens argued that, while the judgment does not use that term, neither the judgment, nor the deed, contains a limitation in time. The Hansens conceded, however, that “Hansen’s rights can be taken by eminent domain, which has occurred here. So, in that sense, perpetuity can be terminated by eminent domain, but otherwise, the contract itself and the implementing deed contain no time limitations on Hansen’s right of access or Cal-Trans’ obligations.”

The trial court agreed with the Hansens, finding they had “established compensable access impairment for two primary reasons: (a) the 1986 stipulated judgment...between the parties...did grant new access rights to defendants to Highway 101...; and (b) the new project clearly adds significant distance to the public’s ingress and egress to defendants’ property from Highway 101.” The court concluded, therefore, that the Hansens had proven their entitlement to seek damages due to, among other things, substantial impairment of access.

After the issuance of this ruling, but before the trial on compensation, the Hansens prepared and sent to the State a proposed Amended Answer that included disclaimers of certain property interests by certain individuals. According to the Hansens’ case management statement, the purpose of the proposed Amended Answer, together with a probate document, was to “satisfy any concerns of Cal-Trans regarding title.” For reasons that will become clear during our discussion of the issues, the Hansens also made a point of deleting from the proposed Amended Answer any reference to the 1986 stipulated judgment.

Because the State did not sign a stipulation to allow the filing of the Amended Answer, the Hansens, at the case management conference, requested leave of court to file the pleading, and the State did not object. The Hansens assert the proposed Amended Answer was filed on March 16, 2010, but nothing in the record shows the document was ever filed.

The trial on the issue of compensation took place in January and February, 2011. The transcript of that trial is not before us. The jury issued a special verdict, which, as pertinent here, awarded compensation to the Hansens in the sums of \$525,122 for the land and improvements (structures), \$300,000 for loss of goodwill, and approximately \$1.7 million in damages to the remainder of the property. Judgment was entered in March, 2011. The judgment included the following language: “The payment of said total sum of money...shall be in full payment for said parcels, and for all damages of every kind and nature suffered or to be suffered by reason of the acquisition of said parcels and the construction and use of the project in the manner proposed by [the State]. This Judgment does not resolve the case of *Hansen’s Truck Stop, Inc. v. State of California, et al.....*”

C. The Breach of Contract Action

The case referred to in the eminent domain judgment is the underlying action in this matter. It was filed in March, 2010, shortly after the Hansens’ proposed Amended Answer was prepared, and it alleged a single cause of action for breach of the 1986 Stipulated Judgment. The State demurred to the complaint, arguing that there was another action pending (the eminent domain action) by which the Hansens were seeking damages for substantial impairment to freeway access, and that the Hansens cannot split their cause of action for damages between the eminent domain claim and the contract claim as both seek damages for the same primary right, viz., the loss of access rights. The Hansens argued, however, that they are seeking different *kinds* of damages for the breach of contract action than the damages they are permitted to recover in an eminent

domain action—which are circumscribed by statute—such as personal property damages, direct business losses during and after construction, and other consequential damages caused by the breach of the stipulated judgment.

The State thereafter filed a motion for summary judgment. It argued the State did not, and cannot contract away its power of eminent domain and, therefore, its exercise of that power to condemn the Hansens' access rights cannot be a breach of any obligation to the Hansens under the 1986 stipulated judgment. In opposition the Hansens did not dispute the State's premise, but argued, instead, that the State could have condemned *specifically* the Hansens' rights in the stipulated judgment but failed to do so, and therefore those contractual rights could still be sued upon. The Hansens contended, in the alternative, that the action could be treated as one for inverse condemnation, in that it was a "de facto taking of a valid contract."

The trial court granted the State's motion, ruling that "no reasonable factfinder could conclude other than that the State condemned the Hansen Parties' access rights under the 1986 agreement." Because the Hansens conceded that no breach of contract action could be brought for property rights that had been condemned, "no genuine issue of material fact precludes the dismissal of their breach of contract claim." With respect to the inverse condemnation claim, the court agreed that it would be barred, under the authorities cited by the State, but only when the eminent domain judgment became final, and until then, the Hansens should have the opportunity to amend. The court therefore treated the State's motion as one for judgment on the pleadings; it granted "[j]udgment on the pleadings with respect to the Hansen Parties' cause of action for breach of contract...with prejudice," and it granted the Hansens leave to amend.

The following month, the Hansens filed a motion for clarification, stating that the eminent domain judgment *was* final, and asking the court whether, under the circumstances, it would allow plaintiffs to amend the complaint to allege inverse condemnation. The State agreed that the judgment in the eminent domain action was

final. The court concluded that the final judgment entered in the eminent domain action was res judicata with respect to any inverse condemnation claim, and ordered that judgment be entered in favor of the State. This appeal followed.

II. STANDARD OF REVIEW

The parties agree that this appeal presents only questions of law, and therefore the judgment is reviewed de novo. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 602.) “The standard of review of a judgment on the pleadings is the same standard that is used to review the propriety of a judgment following the sustaining of a demurrer. [Citation.] The ultimate question on appeal ‘ “ ... is whether, disregarding imperfections of form which could be cured by amendment, the facts pleaded and judicially noticed entitle [plaintiff] to any relief, ... [Citations.]” ’ [Citations.]” (*Kayfetz v. State of California* (1984) 156 Cal.App.3d 491, 496.)

III. DISCUSSION

The Hansens make two arguments. Neither has merit.

The Hansens first contend the trial court erred in treating as “judicial admissions” statements made in their Answer to the eminent domain complaint and in their post-trial brief on the issue of entitlement to damages for loss of access. The Hansens argue the trial court erroneously concluded, based on these judicial admissions, that the Hansens had conceded that their rights under the 1986 stipulated judgment had already been adjudicated in the eminent domain proceeding.

To reprise: In the Hansens’ Answer in the eminent domain proceeding, they specifically identified the 1986 stipulated judgment as one of the bases for their right to claim damages for impaired access. In the post-trial brief the Hansens argued, in response to the State’s claim that the access rights granted by the stipulated judgment were not granted in perpetuity, that “Hansen’s rights can be taken by eminent domain, which has occurred here. So, in that sense, perpetuity can be terminated by eminent

domain, but otherwise, the contract itself and the implementing deed contain no time limitations....”

The Hansens contend that the trial court should not have treated these statements as “evidentiary facts” because (1) the Answer was superseded by an Amended Answer which eliminated any reference to the 1986 stipulated judgment as a basis for loss-of-access damages, and (2) the argument in the brief was merely a “casual, unnecessary argument” that did not intend to concede that all of the Hansens’ rights in the 1986 stipulated judgment were taken in the eminent domain action. To buttress this point, the Hansens refer to the trial court’s ruling on the demurrer—in which it concluded the Hansens were pursuing “different primary rights than [those] addressed in [the eminent domain action]”—and argue that, given this ruling, “it is inexplicable that the trial court could later find that [the Hansens] conceded ‘that they may not pursue a breach of contract action.’”

This argument fails for multiple reasons. First, as we have described, although the Hansens *proffered* an Amended Answer (deleting the reference to the 1986 stipulated judgment), it was never filed. In any event, the Hansens cannot now disavow their specific request that their rights under the 1986 stipulated judgment be adjudicated in the eminent domain action by purporting to remove it from their pleading after its adjudication. Moreover, any reference or lack thereof to the stipulated judgment in the Answer is of little import. The question is whether the Hansens actually litigated their right to seek damages due to impairment of their access rights *under the stipulated judgment* which, unquestionably, they did. In the eminent domain action the State took the position that the stipulated judgment granted no permanent access rights to the freeway, while the Hansens argued strenuously that “[t]he 1986 stipulated judgment contract very clearly is intended to and did grant *new* access rights to Hansen to Highway 101,” and that these rights were continuously recognized by the State in later deeds and records. The court agreed with the Hansens, ruling that the stipulated judgment did grant

new access rights to the Hansens to Highway 101, and the Hansens were therefore entitled to pursue damages due to the loss of those access rights caused by the taking.

On this record, we agree with the trial court that “[i]t cannot seriously be disputed that the [eminent domain action] condemned whatever access rights the Hansen Parties had under the 1986 agreement, in light of the fact that they were awarded damages precisely because of the impairment of said access rights.” In so ruling the trial court made reference to the Hansens’ concession, in their prior brief, that their right to access can be taken by eminent domain. But it is a mischaracterization to suggest the trial court treated that statement as either a judicial admission or as an evidentiary fact; manifestly, it was cited merely as confirmation of the court’s own legal analysis.⁴

The Hansens’ reliance on the trial court’s order overruling the demurrer is equally misplaced. That order bears no legal relationship to the order dismissing the Hansens’ contract claim. As the trial court itself stated in its ruling on the summary judgment motion: “The Court acknowledges that it previously overruled a demurrer filed by the State on the ground that the breach of contract action ‘states facts asserting different primary rights than those addressed in [the 2007 Action]. [Citation.] However, that Order was entered prior to the State’s arguing (and the Hansen Parties’ conceding) that a breach of contract claim cannot be premised on the State’s exercise of its eminent domain power.”

Additionally, the Hansens commit the cardinal sin of misquoting the record. They cry foul because the trial court found “that [the Hansens] conceded ‘that they may not pursue a breach of contract action’” when no such concession had been made. The trial court’s actual statement was that the Hansens conceded “they may not pursue a breach of

⁴ The Hansens also contend they had no notice or opportunity to be heard on the issue of the judicial admissions, because that issue was not argued by the State in its moving papers but was raised for the first time in the trial court’s order. As we have concluded the trial court did not rely on any supposed judicial admissions, we need not address this argument.

contract action for *property rights that have been condemned.*” (Italics added.) Even on appeal the Hansens agree that they were already awarded “damages for impairment of access rights...at [the eminent domain] trial.”

At the heart of the Hansens’ argument is their claim that, because certain damages resulting from the impairment of access are non-compensable in eminent domain (e.g., personal property losses, consequential damages), they are entitled to recover those damages in a separate contract action. This argument is merely a rehash of their argument in opposition to the demurrer, and completely ignores the legal principle upon which this case was actually decided—that the State cannot bargain away its governmental authority, including its power of eminent domain, and therefore it does not breach the terms of the stipulated judgment by the exercise of that authority. (*City of Glendale v. Superior Court* (1993) 18 Cal.App.4th 1768, 1778 [governmental entities cannot “abridge by contract [their] sovereign authority to take property by eminent domain”].)

The Hansens did not dispute this principle below, but argued, instead, that the State could have condemned its rights in the *1986 stipulated judgment* but did not do so. This brings us full circle to the Hansens’ initial contention—that they did not concede that their rights under the 1986 stipulated judgment were condemned and adjudicated in the eminent domain action and that the trial court erred in so concluding based on the Hansens’ so-called judicial admissions. We have already analyzed and rejected these arguments.

The Hansens’ second argument is this: “If this court agrees . . . that the trial court should not have granted summary adjudication of their complaint, then it follows that this court should also confirm the trial court’s decision to grant [the Hansens] the right to [amend to] allege inverse condemnation.” Obviously, we do not agree that the trial court should not have granted summary judgment; but in any event the Hansens have not supplied any grounds for seeking an amendment.

The Hansens rely on precedents which direct the courts to allow amendments to pleadings where the “missing elements can be deduced from supporting materials such as the affidavits in support of the motion.” (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719, fn.5.) Notably, however, the Hansens have not proffered any facts or legal argument to support the necessary predicate that a legally viable inverse condemnation cause of action can even be stated. The burden of proving a reasonable possibility of amendment falls on the plaintiff. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “To satisfy that burden on appeal, a plaintiff ‘must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading’ [Citation.] The assertion of an abstract right to amend does not satisfy this burden.” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43.)⁵

IV. DISPOSITION

The judgment is affirmed.

⁵ The Hansens appear to raise in their reply brief a brand new argument that the State failed to include in the legal description of its eminent domain complaint the Sandy Prairie Road access. “[T]he rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.” (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8.) In any event we fail to understand the relevance of this alleged fact since the record so clearly reflects the Hansens’ claim for damages due to the taking of this very access.

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.