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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JOSEPH L. CASALNUOVO et al.,

Plaintiffs and Appellants,

v.

COUNTY OF MARIN et al.,

Defendants and Respondents.

A136511

(Marin County
Super. Ct. No. CIV 1200965)

Plaintiffs Joseph L. Casalnuovo (Joseph)¹ and Lorraine D. Casalnuovo, individually and as trustees of the Joseph L. Casalnuovo and Lorraine D. Casalnuovo Revocable Trust, appear in propria persona. They appeal from the trial court's dismissal of their first amended complaint as untimely pursuant to Government Code section 66499.37 (section 66499.37), upon motion by defendants County of Marin (County), Brian C. Crawford, and Thomas Lai. Plaintiffs argue the trial court's grant of defendants' motion to dismiss violated plaintiffs' constitutional rights, and was in error because defendants failed to establish the date from which the filing of the complaint and service of summons should have been calculated pursuant to section 66499.37. We affirm the trial court's order dismissing plaintiffs' first amended complaint.

¹ We refer to Joseph Casalnuovo by his first name solely to distinguish him from Lorraine Casalnuovo. We intend no disrespect.

RELEVANT BACKGROUND

Plaintiffs' Civil Action Against Defendants

On February 28, 2012, plaintiffs, and another person who is not a party to this appeal, Diane Nathan, filed a complaint against defendants, alleging numerous causes of action. A summons was filed on that same date, but the record does not indicate service of this summons. The complaint indicates all plaintiffs were represented by counsel, but that Joseph was also appearing in propria persona. Nathan dismissed her complaint without prejudice, plaintiffs filed substitutions of attorney indicating that they each were representing themselves, and plaintiffs filed a first amended complaint on April 18, 2012. The record indicates that personal service of this first amended complaint was made to certain persons on April 24, 2012.

Plaintiffs alleged in their first amended complaint as follows: Plaintiffs were the owners of certain real property located on Tarry Road in San Anselmo (property). Starting in mid-2010, they undertook through the County Development Agency, referred to as the "Planning Department" in the first amended complaint (Planning Department), to obtain approval of a land division of the property from one parcel into two parcels.

Plaintiffs further alleged that certain documents attached to their first amended complaint indicated that the imposition of affordable housing "in lieu" fees for the division of the property from one parcel into two was not required by Marin County law, that defendants were aware of this "exemption," and that one of the defendants, Thomas Lai, indicated that the "Planning Department intended to request the Board of Supervisors to clarify the purported confusion in the Regulations concerning imposition of the in lieu fees in land divisions from one to two parcels."

According to plaintiffs, "for several years before January 27, 2010, and until late in the year of 2011, all individual defendants . . . and the Planning Department notified and promised plaintiffs and other applicants seeking land divisions of one parcel into two, that the Planning Department intended to request the Board of Supervisors to clarify the purported confusion; that said promises were made without any intention to perform." Defendants knowingly and falsely misrepresented to plaintiffs, as well as to other

applicants, “that because of a purported confusion in the regulations, that such land division required plaintiffs, and other applicants to pay affordable house in lieu fees, which were reduced one half from \$92,800 to \$46,400 for certain time frames, and at earlier time frames to a lesser amount.” In doing so, defendants “concealed” from plaintiffs and other similarly situated applicants that certain land divisions were exempted from being assessed these in lieu fees.

Plaintiffs anticipated defendants would argue their action was barred by the failure to timely bring a writ of mandate proceeding against the County. Plaintiffs alleged defendants were estopped from such a defense for several reasons. These included because plaintiffs had brought “a class administrative proceeding,” in which they sought to revoke and have set aside the in lieu fees and have returned the fees incorrectly paid by others; the County Board of Supervisors (Board) had “neglected or refused to decide” the class issues, gave only a “preliminary indication” regarding plaintiffs’ personal claim, and never notified plaintiffs of any other hearing date on the class administrative issues, any decisions about these issues, or the procedures required to further have the “class issues” determined; and the Board did not provide plaintiffs with written or oral notice of the time and manner for any further proceedings which plaintiffs were required to take in order to object to the Board’s decision or obtain judicial review. Also, although plaintiffs had provided the Board with evidence “of flagrant fraud and deceit” by the other defendants, the Board had failed to take any administrative action, thereby showing a bias in favor of defendants, and also was biased against Joseph because of his public criticisms of the Board. Plaintiffs also alleged defendants were estopped from the defense because they were plaintiffs’ fiduciaries, since government entities are made by, of, and for the people, and had violated plaintiffs’ constitutional due process and equal protection rights.

Based on their allegations, one or all plaintiffs brought seven causes of action against defendants. Joseph brought two causes of action for personal injury, one based on fraud and one based on negligence. All plaintiffs brought causes of action for breach of statutory duty associated with “attempted grand theft”; fraud, deceit, and concealment;

negligence; restitution; and common counts. They claimed \$60,000 in damages and entitlement to attorney fees. Their prayer for relief included a request for compensatory, special, general, and punitive damages, as well as attorney fees and costs.

Defendants' Motion to Dismiss

Defendants moved to dismiss plaintiffs' first amended complaint on the ground that plaintiffs had not served summons on defendants within 90 days of the Board's decision, as required by section 66499.37. Section 66499.37 states in relevant part:

“Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations.” (§ 66499.37.)

As a part of their motion, defendants requested that the trial court take judicial notice of certain documents pursuant to Evidence Code section 452, subdivision (b). This included the Board's resolution regarding plaintiffs' appeal, which states that it was passed and adopted on September 27, 2011 (September 27, 2011 resolution).

Defendants recited the following circumstances, which were taken either from plaintiffs' allegations in their first amended complaint or the material for which defendants sought judicial notice. In mid-2010, plaintiffs applied to the Planning Department to divide their property into two lots pursuant to the California Subdivision Map Act, Government Code section 66400 et seq. (SMA), and the County's implementing subdivision ordinance. After hearing, the County's deputy zoning administrator approved the tentative map subject to certain conditions, including that plaintiffs pay an in lieu affordable housing fee pursuant to Marin County Code section 22.22.020.

Plaintiffs appealed this condition to the County's Planning Commission, asserting that the payment of the in lieu fee did not apply under the Marin County Code (MCC). The Planning Commission upheld the condition and plaintiffs appealed to the Board. After public hearing on September 27, 2011, the Board concluded on that same date that, via a resolution, that, although the text of the relevant MCC ordinance did not support plaintiffs' assertions, a table included in it created sufficient confusion to justify granting plaintiffs a waiver of the fee requirement. Defendants contended that the Board also rejected plaintiffs' contentions that they were entitled to certain processing fees they had paid as part of their application for the tentative map and appeals.

Plaintiffs filed their original complaint approximately five months after the Board adopted its decision, filed their first amended complaint a month and a half later, and served summons shortly thereafter. According to defendants, "There [was] absolutely no dispute that all the causes of action [were] related solely to defendants' alleged wrongful actions in interpreting the laws related to the processing of plaintiffs' tentative map under the SMA and the County's implementing ordinances."

Defendants argued that, given these circumstances, plaintiffs were required by section 66499.37 to file their complaint and serve summons within 90 days of the Board's decision on September 27, 2011, and did not do so. Therefore, defendants urged, the court should dismiss plaintiffs' first amended complaint as untimely filed and served.

Plaintiffs opposed the motion on several grounds in an opposition brief and additional filings. Plaintiffs also objected to defendants' request for judicial notice of the Board's September 27, 2011 resolution because "only the Tentative Map, and its date, on plaintiffs' land division application is relevant to the issue of what constitutes the decision of said [Board]." Plaintiffs, as we will discuss, requested that the trial court take judicial notice of four documents submitted via a declaration of Joseph pursuant to Evidence Code sections 452, subdivisions (b) and (h), and 453, et seq. The trial court's ruling does not directly refer to these requests, although the court indicated it had reviewed the papers submitted in support and in opposition to the motion. In their

appellate briefing, the parties cite to one or more of these documents and do not challenge their inclusion in the record or our consideration of them.

The trial court granted defendants' motion and ordered the dismissal of plaintiffs' first amended complaint by a written order in August 2012 that does not state the bases for its decision. Plaintiffs filed a timely notice of appeal.

DISCUSSION

Plaintiffs argue the trial court's dismissal of their complaint must be reversed on four grounds, three of them constitutional in nature. According to plaintiffs, portions of section 66499.37 as drafted or implemented are arbitrary, capricious and violate substantive due process of law; portions of section 66499.37 deny plaintiffs equal protection of the laws; and plaintiffs have the right to recover damages for unreasonable search and seizure in violation of the Fourth Amendment of the federal Constitution and other constitutional provisions. Plaintiffs also argue reversal is necessary because defendants did not establish the date of the Board's "decision" from which the last date for filing of a complaint and service of summons should be calculated pursuant to section 66499.37.

I. Standard of Review

Plaintiffs argue that our standard of review is "akin to sustaining a general demurrer," and cite *Blank v. Kirwan* (1985) 39 Cal.3d 311. That case states in relevant part that "[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Id.* at p. 318.)

Defendants agree that we are not required to accept all contentions, deductions, or conclusions of fact or law, citing *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967 (*Aubry*), but also assert that we should conduct an independent review of a dismissal of an action pursuant to section 66499.37, based on *Torrey Hills Community Coalition v. City of San Diego* (2010) 186 Cal.App.4th 429, 434.

Plaintiffs do not disagree with defendants’ assertions, but emphasize that *Aubry* states it is an error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory, and that it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility that the plaintiff can cure a defect in the complaint by amendment.

We need not determine which party is correct regarding the particulars of our standard of review because our conclusions are the same regardless of the standard of review we apply. In reviewing all of plaintiffs’ appellate claims, we are most mindful that “we must presume the judgment is correct, and the appellant bears the burden or demonstrating error.” (*Holmes v. Petrovich Development Co., LLC* (2011) 191 Cal.App.4th 1047, 1058 [reviewing the trial court’s grant of summary adjudication].) Thus, for example, our Supreme Court has stated that, “[w]hen reviewing a discretionary dismissal . . . , an appellate court must presume that the decision of the trial court is correct. ‘ “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” ’ ” (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

II. Plaintiffs’ Constitutional Arguments

A. Substantive Due Process

Plaintiffs argue that that portion of section 66499.37’s prohibition against money damages claims for defendants’ fraudulent acts if a summons is not served within 90 days of an agency “decision” is “unreasonable, arbitrary, capricious, [and violates] a fundamental constitutional right, Substantive Due Process of Law,” an issue they characterize as one of first impression. Their argument is unpersuasive.

Plaintiffs concede that it is reasonable for the 90-day service of summons limitation contained in the statute to apply to tentative map decisions, but argue that “there is no fact or sound public policy reason why property owner[s] should be limited to 90 days for money damage claims arising out of subdivision proceedings.” They assert that such money damages claims “are and should be severable from the subdivision process if desired, or they could be included within that process.” The Legislature’s

failure to foresee, and the Board’s failure to apply, this “dichotomy” is “arbitrary and capricious,” and, plaintiffs assert, “easily remedied.”

Plaintiffs cite three cases in support of their argument. While each in some manner addresses due process or “arbitrary and capricious” conduct, each involves circumstances that are inapposite to those before us. Only one, *Davis v. Passman*, touches on constitutional issues, but these issues are not relevant to whether the 90-day service of summons limitation that the trial court applied here is constitutional. (See *Davis v. Passman* (1979) 442 U.S. 228 [recognizing a cause of action for damages under the Fifth Amendment of the federal Constitution]). The other two cases affirm, under an abuse of discretion standard of review, the award of attorneys’ fees for “arbitrary and capricious” conduct, as that term is used in Government Code section 800, which is not implicated here. (See *Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57, 61-62 [affirming a court’s award of attorneys’ fees incurred because of “arbitrary and capricious” conduct by a county board of equalization pursuant to Government Code section 800]; *Santos v. Department of Motor Vehicles* (1992) 5 Cal.App.4th 537, 550-551 [also affirming a court’s award of attorneys fees incurred because of the “arbitrary and capricious” suspension of the respondent’s driver’s license].) Plaintiffs do not explain the significance of any of these case discussions to their substantive due process argument.

B. Equal Protection

Plaintiffs also argue that the application of the 90-day service of summons limitation contained in section 66499.37 to their money damages claims violates their equal protection rights under the Fourteenth Amendment of the federal Constitution. Plaintiffs explain that, under the law, a government agency could discover fraud by a property owner seeking subdivision more than 90 days after a decision and sue, as the 90-day limitation contained in section 66499.37 does not apply to the agency’s claims. Thus, they argue, applying this limitation to plaintiffs’ money damages claims violates plaintiffs’ equal protection rights because “[t]he public agency can sue for up to three years from discovery of the fraud, while plaintiffs would have 90 days from the decision

of a public agency to serve a summons on a complaint.” Plaintiffs assert that “[t]he trial court and defendants ignored this fundamental issue.” Plaintiffs do not cite any law or to the record in support of their position, other than the Fourteenth Amendment itself.

C. Unreasonable Search and Seizure

Plaintiffs’ last constitutional claim is that defendants engaged in “unreasonable search and seizure” of their property in violation of the Fourth Amendment of the federal Constitution, as well as other constitutional provisions.

Plaintiffs argue that defendants’ misconduct was not only intentionally fraudulent, but also constituted grand theft and attempted grand theft pursuant to Penal Code sections 484 through 502.9. They assert that a remedy for this misconduct is found in the Fourth Amendment of the federal Constitution, which provides, “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” (U.S. Const., 4th Amend.)

Plaintiffs assert, based on a dictionary definition, that “seizure” includes a “taking.” This claim is based on a treatise of California law and *People v. Tremayne* (1971) 20 Cal.App.3d 1006, which indicate an individual whose property has been seized under color of law may seek return of that property via a civil action. Plaintiffs also assert, without citation to anything other than their own first amended complaint, that “[m]oney is property, as is talent and creative time/efforts, being ‘labor’, health which is a valuable property, all of which were taken by defendants from plaintiffs, including appeal fees, times spent at hearings, preparing briefs, unnecessary surveys and staking out, and other expensive, unnecessary arbitrary requirements.” Therefore, they argue, “the Fourth Amendment seizure of property provision as defined by case law, as well as Penal Code provisions supersedes the Government Code section relied on by defendants.”

Defendants further assert, relying again on a treatise of California law, as well as *Silva v. MacAuley* (1933) 135 Cal.App. 249, that an officer who subjects a person or his

or her premises to an unlawful seizure without a warrant may be liable for damages and, therefore, defendants Crawford and Lai, as well as their employer, the County, may, by analogy, be liable for damages because they “subjected plaintiffs to the indignity of an unlawful seizure of assets and labor without a warrant.”

Plaintiffs also cite the provisions contained in the Fifth Amendment of the federal Constitution, as well as Article I, section 19 of the California Constitution, prohibiting the taking of private property for public use without just compensation, as well as the statement in *Armstrong v. United States* (1960) 364 U.S. 40 that constitutional protections for property rights exist “to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” (*Id.* at p. 49.) Plaintiffs contend that “[t]he appeal fees, the unnecessary survey and staking, and the time, effort and plaintiffs unnecessary expenditures in administrative proceedings, amounted to plaintiffs’ private property being taken by the government.”

Based on their analysis, plaintiffs assert their action is subject to statutes of limitations applicable to civil actions regarding wrongfully seized or retained property.

D. Analysis

Defendants respond to plaintiffs’ claims by first arguing that “*none* of the cases or other authority cited in these sections of [plaintiffs’] brief can even remotely be argued to stand for the proposition that the ninety (90) day statute of limitations of [section] 66499.37 is too short to pass constitutional muster, or that some longer statute of limitations should apply to facts similar to this case involving a condition imposed upon a subdivision map by a local legislative body.” Although defendants go on to argue why section 66499.37 meets due process requirements, we need not consider defendants’ further arguments, or the lack thereof, because we agree with their first statement.

That is, plaintiffs do not meaningfully discuss any relevant legal authority, their complaint allegations, or the circumstances of their administrative appeals in the course of stating their appellate constitutional claims. In particular, they do not discuss the application to the circumstances of this case of any of the legal standards they must meet in order to establish the constitutional violations they assert, nor do they explain why the

trial court's grant of defendants' motion to dismiss was in error based on such an analysis. In short, they do not present a meaningful argument regarding constitutional error for us to consider. Accordingly, we presume the court's ruling was correct and reject plaintiffs' appellate constitutional claims. (*Holmes v. Petrovich Development Co., LLC*, *supra*, 191 Cal.App.4th at p. 1058; *Howard v. Thrifty Drug & Discount Stores*, *supra*, 10 Cal.4th at p. 443.)

III. Plaintiffs' Claim About the Date of the Administrative Decision

Plaintiffs also claim that defendants' motion to dismiss should have been rejected because defendants did not establish the date of the administrative "decision" that triggered the 90-day service of summons limitation contained in section 66499.37. We disagree.

Defendants contended below, and the trial court by its ruling appears to have agreed, that the final decision of the Board regarding plaintiffs' appeal was contained in the Board's September 27, 2011 resolution, but that plaintiffs did not serve any summons regarding their complaint until more than 90 days later. Therefore, according to defendants, the trial court was required to dismiss plaintiffs' first amended complaint pursuant to section 66499.37.

Plaintiffs refer to four documents contained in the record that, they contend, "expressly" set forth "the administrative class scope" of their appeal to the Planning Commission and to the Board. Plaintiffs further contend, based on a declaration by Joseph, that there was "reconsideration of the [Board's] initial decision over several months thereafter, involving the many applicants in the administrative class proceedings initiated by plaintiffs, in which affirmative relief was granted to most of the class members."

Based on these facts, plaintiffs contend that the Board's September 27, 2011 decision regarding their appeal was not final and, thus, not one from which they could sue, since generally, an agency action is not reviewable by the courts until it is final. Therefore, plaintiffs assert, defendants "failed to establish the date of the [Board's] final action in order to compute the allowable time to apply the time limitation of [section]

66499.37.” Given this “undisputed evidence,” plaintiffs assert the trial court should have denied defendants’ motion to dismiss.²

Defendants respond that plaintiffs “cite neither evidence nor legal authority to support their argument; and there is none.” They do not dispute that in the administrative proceedings, plaintiffs argued that several other applicants had the same condition of an in lieu fee imposed upon their tentative maps. Defendants also do not dispute that the Board instructed Planning Department staff to refund the fees imposed on certain other applicants who, like plaintiffs, might have been legitimately confused by the table that had been added to the relevant County ordinance.

However, defendants assert, there is no evidence that any of these actions constituted a reconsideration of the Board’s decision regarding plaintiffs’ administrative appeal on September 27, 2011. Defendants further assert that “there is simply no authority for a so-called ‘administrative class proceeding’ that the County is aware of under the Subdivision Map Act or Marin County’s implementing ordinances with respect to a particular tentative map application.”

Plaintiffs reply that defendants’ arguments do nothing to contradict the documents they identified in their opening brief as establishing that the Board reconsidered its decision by having hearings and making further decisions on the “class action claims” presented by plaintiffs. Furthermore, defendants cite no authority that it is illegal to have an administrative class proceeding, or that “the administrative class proceedings cannot be considered in the reconsideration process.” Accordingly, plaintiffs assert, defendants did not establish “the date of the ultimate revised decision from which the 90-day time limitation begins to run.” Thus, plaintiffs do not provide us with any legal authority

² Plaintiffs further contend that the Board knew defendants Crawford and Lai were trying to illegally obtain money from plaintiffs “for a purported ‘worthy cause,’ affordable housing, but did nothing because of a philosophy that “the end justifies the means,” and that Crawford and Lai committed fraud because in their “greed” they sought “more power, privilege, prestige and career advancement.” Plaintiffs do not explain the significance of these contentions to their appellate argument. We conclude they have no place here and do not further address them.

establishing their right to bring, or the procedures to be employed in bringing, an “administrative class proceeding” before the Board, nor are we aware of any.

Furthermore, we have reviewed the record citations provided by the parties. We find no support in the documents cited by plaintiffs for their contention that they brought some sort of “administrative class proceeding” from which a final decision was not made by the Board on September 27, 2011. To the contrary, the documents cited by plaintiffs repeatedly indicate that plaintiffs brought their administrative appeals on behalf of themselves only, and plaintiffs do not identify any other decision regarding their appeal to the Board other than the Board’s September 27, 2011 resolution.

Specifically, plaintiffs’ June 29, 2011 submission to the Planning Commission states that “Joseph Casalnuovo, hereby submits the following *re his Appeal Petition*,” cites specifically to his property address only and identifies only Joseph Casalnuovo as the “applicant” before then discussing the views of he and his wife regarding the in lieu fees. (Italics added.) Joseph does state that, “[i]n addition to deleting the erroneous assessment against us by my appeal to the Planning Commission, I am trying to obtain reimbursement for all property owners in our situation who were required to pay in lieu fees, as well as preventing other future similar owners from being so assessed.” However, plaintiffs fail to explain, let alone establish, how such a statement converted their own appeal into some sort of “administrative class proceeding.”

A written appeal to the Board dated July 19, 2011 states that it is an appeal from the determination regarding the “Casalnuovo land division,” and again refers to the property’s address only. It states that “[t]his petition for appeal is made on behalf of Joseph L. Casalnuovo and Lorraine D. Casalnuovo, individually and as trustees of the Casalnuovo Family Trust,” and that “applicant” as used in the petition “shall be deemed to include both Joseph L. and Lorraine D. Casalnuovo in their several capacities.” The petition states the “relief requested by Joseph and Lorraine Casalnuovo.” The August 11, 2011 appeal brief to the Board makes similar statements about the parties to the appeal and their requests for relief. While part of the relief requested in these documents was for

other property owners, plaintiffs again fail to explain how such a request converted their own appeal into some sort of “administrative class proceeding.”

Finally, the fourth document identified by plaintiffs, a September 26, 2011 submission to the Board,³ states that it is being submitted by Joseph regarding “his appeal” from the decision of the Planning Commission regarding the property, and refers only to the “in lieu fee assessed against my wife and me[.]”

In addition, the only Board decision in the record identified by the parties that relates to plaintiff’s administrative appeal is the September 27, 2011 resolution identified by defendants. It states that it is regarding “the Casalnuovo appeal and conditionally approving the Casalnuovo land division,” and refers to that property only.

In their reply brief, plaintiffs refer to two declarations Joseph submitted below, in which he refers to a “class action” administrative proceeding and his involvement in the efforts by others to obtain relief from the in lieu fee requirements asserted against them by the County. However, plaintiffs do not explain why the trial court was, or we are, required to conclude from Joseph’s declaration statements that their administrative appeal was an administrative class proceeding, or that the Board’s September 27, 2011 resolution did not constitute a decision from which they were required to file a complaint and serve summons within 90 days pursuant to section 66499.37.

Furthermore, we have independently reviewed plaintiffs’ arguments and Joseph’s statements. We do not find them a basis for concluding that plaintiffs’ appeal was some sort of administrative class proceeding in light of the record before us. Whatever Joseph’s recitation of the proceedings and his efforts, he does not identify any legal authority for an “administrative class” proceeding under the circumstances, does not identify any documents establishing that plaintiffs joined in an “administrative class” proceeding, and does not identify another decision regarding plaintiffs’ administrative

³ In their opening brief, plaintiffs indicate they filed a “supplemental brief” with the Board on September 26, 2011 constituting 13 pages. However, their record citation is to a single page of a September 26, 2011 submission to the Board, followed in the record by a brief filed in June 2012, in superior court, to oppose defendants’ motion to dismiss.

appeal to the Board. The documents contained in the record, including those submitted by plaintiffs, indicate without contradiction that plaintiffs' administrative appeals were regarding their property alone, and that the Board decided plaintiffs' appeal to the Board in their September 27, 2011 resolution. Plaintiffs ignore this documentary evidence, which is fatal to their argument.

In short, plaintiffs do not explain why the trial court, or we, could not conclude that the Board's September 27, 2011 decision was the proper decision from which the 90-day service of summons limitation should be calculated. Again, we presume the court's ruling was correct. We reject plaintiffs' claim that defendants did not establish the date of the Board decision from which they were required to serve summons within 90 days pursuant to section 66499.37 because plaintiffs do not affirmatively show error by the trial court. (*Holmes v. Petrovich Development Co., LLC, supra*, 191 Cal.App.4th at p. 1058; *Howard v. Thrifty Drug & Discount Stores, supra*, 10 Cal.4th at p. 443.) As our discussion indicates, even applying an independent standard of review, we reject plaintiffs' argument as unpersuasive in light of the record before us.

In light of our conclusions regarding plaintiffs' appellate claims, we have no need to, and do not, further address the remainder of the arguments and contentions by the parties.

DISPOSITION

The trial court's order dismissing plaintiffs' first amended complaint is affirmed. Defendants are awarded costs of appeal.

Lambden, J.

We concur:

Haerle, Acting P.J.

Richman, J.