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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LARRY KAUFMAN,

Plaintiff and Appellant,

v.

CITY OF HESPERIA,

Defendant and Respondent.

E052873

(Super.Ct.No. CIVVS1001393)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone,
Judge. Affirmed.

Larry Kaufman, in pro. per., for Plaintiff and Appellant.

Aleshire & Wynder, Eric L. Dunn, Anthony R. Taylor, and Alex S. Johnson for
Defendant and Respondent.

I

INTRODUCTION

Plaintiff Larry Kaufman sued the City of Hesperia for not granting him an
administrative appeal after the city had dismissed two code enforcement citations.

Kaufman, who is representing himself in propria persona, appeals from a judgment after an order granting the city's motion for summary judgment.

Kaufman's appeal seeks only to reverse the order granting summary judgment. In its respondent's brief, the city raises a number of collateral issues concerning the city's demurrer, the city's motion for fees and costs, Kaufman's contempt motion, and Kaufman's motion regarding false allegations. The city did not cross-appeal. We decline to address these additional, superfluous issues. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

Based on our independent review of the record, we affirm the judgment the trial court entered after granting the city's motion for summary judgment. (*Reyes v. Kosha, supra*, 65 Cal.App.4th at p. 457.)

II

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Complaint*

The operative pleading is the first amended complaint (FAC). Kaufman asserts a single cause of action for declaratory relief.

Kaufman alleges a city code enforcement officer served him with a notice of public nuisance on February 3, 2009, requiring him to remove cargo containers, vehicles, and other personal property located at 6784 Opal Avenue. In March and May 2009, Kaufman paid for two building permits for construction of a residence and a detached garage. Nevertheless, in May and June 2009, code enforcement posted two administrative citations, No. 20158 and No. 20162, citing Kaufman for an illegal land use

and a violation of Hesperia Municipal Code section 16.12.085(C)(4). Kaufman alleges he was not mailed a copy of the citations by certified mail.

On July 6, 2009, Kaufman filed an administrative appeal even though he had not been given the required notice of hearing. On July 8, 2009, code enforcement posted a third administrative citation, No. 20164, without mailing it to Kaufman. On July 22, 2009, Kaufman again filed an administrative appeal although he had not been given proper notice.

When Kaufman asked about the status of his appeal, a city clerk told him no administrative law judge was available, information which he alleges he later discovered was not true.

On February 10, 2010, code enforcement secured an abatement warrant from the superior court, authorizing the city to remove all vehicles, trash and debris, personal property, and cargo containers being stored at the Opal Avenue address. On February 11 and 12, 2010, the city removed and stored Kaufman's property.

Kaufman alleges that he was denied due process under the California constitution because the City did not give Kaufman proper notice and did not set a hearing for his appeals. In his prayer for relief, Kaufman requested the court "[e]nter judgment for declaratory relief sought that Hesperia denied Kaufman his constitutional right to two appeals."

B. The City's Motion for Summary Judgment

The city filed a motion for summary judgment, arguing that no actual controversy exists and that Kaufman's claim to an administrative appeal was rendered moot because

the city had dismissed the administrative citations. Additionally, the city had no jurisdiction to conduct an administrative review of the abatement warrant issued by the superior court.

In support of its motion, the city submitted a separate statement of 10 undisputed material facts. The facts were that the city issued a notice of public nuisance to Kaufman on February 3, 2009. The city issued administrative citation No. 20162 on June 24, 2009. On July 6, 2009, Kaufman filed an appeal. On July 8, 2009, the city issued citation No. 20164. On July 22, 2009, Kaufman filed an appeal. On October 20, 2009, the city mailed a letter to Kaufman informing him the two citations were being dismissed because no hearing officer was available to hear the appeals. The city dismissed both citations before obtaining the abatement warrant on February 10, 2010. On February 11 and 12, 2010, the city abated Kaufman's property pursuant to the warrant.

C. Kaufman's Opposition

Kaufman's opposition to the summary judgment motion was defective because it did not include a separate statement responding to each of the material facts the city contended to be undisputed. (Code Civ. Proc., § 437c, subd. (b)(3).) Instead, Kaufman filed an opposing memorandum of points and authorities and attached three exhibits that were not authenticated.

In his opposition, Kaufman asserted that he did not know about the two dismissed citations until March 10, 2010, when the city's lawyer gave him a copy of the October 20, 2009, letter. Kaufman also maintained that the city did not send the letter in October but that it was a forgery created to cover up the city's negligence. Additionally, Kaufman

disputes that a hearing officer was not available to hear his appeal, citing as support the transcript of a hearing in an unrelated animal control case, *Greene v. City of Hesperia* (Super. Ct. San Bernardino County, 2010, No. CIVSS906992). In that case, Greene apparently received an administrative hearing during the same time period when Kaufman sought a hearing. Furthermore, Kaufman challenged the validity and enforcement of the abatement warrant. Finally, Kaufman clarified his claim and acknowledged that it was too late to conduct administrative hearings on the citations but he “simply desires a declaration that he was denied due process.”

D. The City’s Reply

The city replied that any issue regarding Kaufman’s right to an administrative hearing was moot because the citations had been dismissed. Kaufman was barred from raising any issue involving the scope and enforcement of the abatement warrant not raised in the complaint. Finally, in other proceedings, the court had already ruled against Kaufman’s claim that the city had misrepresented the availability of a hearing officer.

E. The Trial Court’s Ruling

The trial court sustained the city’s objections to Kaufman’s evidence. The court granted summary judgment, ruling that “Plaintiff’s FAC for alleged due process violations for Defendant’s not giving Plaintiff a hearing for the dismissed citations that he allegedly paid for does not present a sufficient case or controversy for the Court to decide.”

III

SUMMARY JUDGMENT MOTION

The party opposing summary judgment must produce admissible evidence raising a triable issue of material fact. Claims and theories not supported by admissible evidence do not raise a triable issue. (Code Civ. Proc., § 437c, subd. (b)(3).) Courts should not hesitate to dispose summarily of meritless litigation based on nothing more than a “smoke and mirrors” presentation. (*Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 219, disapproved on other grounds in *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238; *Lyons v. Security Pacific Nat’l Bank* (1995) 40 Cal.App.4th 1001, 1006 [party cannot oppose orally without separate statement or affidavits].)

Kaufman’s appeal does not recognize the standards of review that apply in an appellate court reviewing the trial court’s grant or denial of a motion for summary judgment. (*Reyes v. Kosha, supra*, 65 Cal.App.4th at p. 457.) Most critically, Kaufman’s omission of a separate statement caused his opposition to the city’s motion to fail: “Without a separate statement of undisputed facts with references to supporting evidence . . . it is impossible . . . to demonstrate the existence of disputed facts.” (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 115.) Failure to comply with this requirement may, in the court’s discretion, constitute a sufficient ground for granting the motion. (Code Civ. Proc., § 437c, subd. (b)(3); see *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 418.)

Even considering Kaufman’s opposition liberally, we hold there was no evidence offered to rebut the city’s argument that dismissal of the citations made Kaufman’s

complaint moot. To establish a triable issue of material fact, the party opposing the motion must produce substantial responsive evidence. The bare assertion that the moving party “fabricated” evidence is insufficient to avoid summary judgment. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 166; *Uhrich v. State Farm Fire & Casualty Co.* (2003) 109 Cal.App.4th 598, 616.)

The issue before this reviewing court is narrow. Did the trial court properly determine there were no disputed facts about whether Kaufman was denied due process after the city dismissed the citations and proceeded with the abatement process? We acknowledge Kaufman’s argument that his due process rights were violated causing him damages of more than \$199,000 for property lost in the abatement, as well as about \$5,676.25 in unreimbursed fees for permits, plans, and the administrative appeal. We conclude, however, that once the citations were dismissed, Kaufman had no grounds on which to seek an administrative appeal. No actual controversy existed after the citations were dismissed. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 746; *Bruce v. Gregory* (1967) 65 Cal.2d 666, 671.) Therefore, Kaufman has no basis for a claim against the city. His objections to the abatement, which was pursued several months after the citations were dismissed, did not present a triable issue of material fact defeating the city’s summary judgment motion.

IV

DISPOSITION

The notice of appeal was from the judgment and order granting summary judgment. In opposing the city’s summary judgment motion, Kaufman did not submit

evidence of a triable issue of material fact. We affirm the summary judgment. The city as prevailing party shall recover its costs on appeal.

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CODRINGTON
J.

We concur:

RICHLI
Acting P.J.

MILLER
J.