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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF SAN CLEMENTE,

Plaintiff and Respondent,

v.

JAMES GOODE,

Defendant and Appellant.

G048001

(Super. Ct. No. 30-2010-00386850)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Ronald L. Bauer, Judge. Affirmed.

James Goode, in pro. per., for Defendant and Appellant.

Rutan & Tucker and Noam I. Duzman for Plaintiff and Respondent.

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Plaintiff and respondent City of San Clemente obtained a permanent injunction prohibiting defendant and appellant James Goode from maintaining a public nuisance on his property by failing to maintain it in compliance with city ordinances. Defendant challenges issuance of the injunction, arguing there was insufficient evidence of any code violations, plaintiff violated his Fourth Amendment and due process rights by trespassing on his property, the ordinances were impermissibly vague, an administrative hearing officer was biased, plaintiff has unclean hands and is equitably estopped from obtaining the injunction, and there is an adequate remedy at law. He also argues attorney fees were excessive. Finding none of these arguments persuasive, we affirm.

FACTS AND PROCEDURAL HISTORY

Defendant resides in San Clemente. Beginning in 1994, defendant's neighbors made numerous complaints, 15 to 20, about the condition of his property (Property). At least one neighbor described it as "filthy and rat infested." The complaints referred to overgrown foliage, maintaining debris in public view, and storing furniture, including refrigerators and cabinets, and inoperable vehicles in public view.¹

In 1998, plaintiff filed a 14-count criminal code enforcement case against defendant, pleading violations based on the condition of the Property. When defendant corrected the violations, the action was dismissed.

Beginning in 1999 through 2002, plaintiff's code enforcement officer issued correction notices to defendant for the same violations. When defendant did not comply, a 13-count criminal complaint was filed in December 2002. In 2006 neighbors

¹ In addition to testimony about the violations, hundreds of exhibits, including a substantial number of photographs, were introduced at the trial. The exhibits were designated as part of the record but the superior court did not have them. In an order to augment the record with the exhibits, with a direction to the parties to transmit them to us, both parties advised they do not possess them and do not know where they are. (See Cal. Rules of Court, rule 18.) Therefore, we proceed on the basis of the trial testimony only. (*Hiser v. Bell Helicopter Textron, Inc.* (2003) 111 Cal.App.4th 640, 656-657.)

again made complaints to plaintiff. When defendant did not voluntarily correct the violations, plaintiff issued another citation and a subsequent notice of violation in 2007.

In 2009 another correction notice was issued and, when necessary corrections were not timely made, an administrative citation was issued. At a hearing on defendant's appeal of the citation, the hearing officer upheld the citation. Again defendant did not cure the violations.

In 2010 and 2011, plaintiff's code enforcement manager took pictures of the same types of violations. Shortly after the 2011 inspection, pursuant to an Inspection and Abatement Warrant, plaintiff entered the Property to obtain information as to the stored vehicles to determine their operability and registration. Plaintiff learned the vehicles had not been registered, some for as long as 10 years.

In 2012 an inspection by the code enforcement manager revealed four inoperable vehicles had been removed but another vehicle and more debris and other items, many placed under large tarps, had been placed in public view. An inspection by another code enforcement officer a few months later showed defendant had tried to hide the objects from public view by placing vinyl panels across his driveway. The panels themselves violated the code. Additionally, items were unlawfully stored and there were vegetation violations. A visit a month later revealed there had been no change.

Plaintiff filed this action in 2010 seeking injunctive relief to abate the public nuisances. During trial in 2012, testimony and pictures showed that as of that date the conditions on defendant's property still existed. After a three-day bench trial a permanent injunction was issued in plaintiff's favor.

Additional facts are set out in the discussion.

DISCUSSION

1. Rules of Court and Defendant's Briefs

The California Rules of Court contain strictures on how an appellate brief is to be organized. Each claim must be set out under a separate heading and supported by

argument. (Cal. Rules of Court, rule 8.204(a)(1)(B).) In his opening brief, defendant summarized his contentions but did not include discrete headings or separate discussions. His reply brief is more in line with the rules.

Further, an opening brief must contain a “summary of significant facts.” (Cal. Rules of Court, rule 8.204(a)(2)(C).) Defendant’s briefs include an enormous amount of testimony, not all of which is significant, often without any argument as to its relevance. In the opening brief defendant’s occasional conclusory arguments are tucked into the facts, often making it difficult to grasp the substance of his claims. These rules violations could result in a forfeiture of defendant’s claims. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Nevertheless, to the extent we can understand defendant’s arguments, we will address them on the merits. If he has intended to make any other arguments or claims, they are forfeited for lack of separate headings, authority, or reasoned legal argument.

2. *Sufficiency of the Evidence*

Defendant argues there was insufficient evidence to prove he violated the applicable city ordinances. In fact, he argues he has never been in violation. We disagree.

When we are faced with a sufficiency of the evidence argument, we start with the presumption the judgment is correct. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.) “[T]he evidence [is viewed] in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference.” (*Id.* at pp. 957-958) If ““there is any substantial evidence, contradicted or uncontradicted ,” to support a finding,” “we must uphold that finding.” (*Ibid.*) We may not reweigh or resolve conflicts in the evidence or redetermine the credibility of witnesses. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

Here there was sufficient evidence to show violations. San Clemente Municipal Code (SCMC) section 8.52.030 requires a property owner to maintain his property and declares a public nuisance for any of the following conditions: “Overgrown vegetation” “[l]ikely to harbor rats, vermin and other nuisances” (SCMC, § 8.52.030(G)(1)); and “[e]xcept where construction is occurring under a valid permit or authorized approval, lumber, junk, trash, garbage, salvage materials, rubbish, . . . refuse, rubble, . . . furniture, appliances, sinks, fixtures or equipment, scrap material, machinery parts, or other material stored or deposited on property such that they are visible from the public way” (SCMC, § 8.52.03(U)). Additionally, “the presence of abandoned, wrecked, dismantled or inoperative vehicles” is a public nuisance. (SCMC, § 10.52.010.)

Further, defendant was required to maintain his landscape to ensure the safety of use of public streets and sidewalks. (SCMC, § 12.24.020.) In addition, there are maximum heights for hedges. (SCMC, § 17.24.090.)

There is substantial evidence defendant violated each of these sections. A neighbor testified that for years a toilet, a Jacuzzi tub, computers, a large photocopier, and trash were in public view on the Property. She also testified there was overgrown vegetation. Another neighbor testified that, on several occasions, he saw his cats leaving defendant’s property with rats in their mouths. Potential buyers of homes in the neighborhood questioned the neighbor about the state of disrepair of the Property.

In response to complaints, city enforcement officers made numerous trips to defendant’s home and observed these conditions. They also saw vegetation encroaching on the right of way, including over the curb and into a gutter and what one inspector described as “impassable in some ways,” shrubs exceeding the height limit, and tree branches overhanging the street. This vegetation was likely to harbor rats. Defendant admitted there were times his shrubbery grew too high. City officials testified defendant stored debris and other items under tarps and behind illegal vinyl panels.

Defendant points out that beginning in the fall of 2009 and extending through the summer of 2012, with intermittent lapses, he had a permit to remodel the interior of the home. He claims many of the items stored outside were construction materials, thereby allowed under the ordinance.

But the record shows items were stored before permits were ever issued and during periods when defendant had no permit. Further, actual remodeling was minimal, and defendant admitted it was not reasonable to store items for four to five years for a project he estimated would take a week to complete. His claim plaintiff had not inspected the interior of the home and thus did not know the project's status is irrelevant.

Defendant also asserts there was no evidence the shrubs were more than six feet high or that the automobiles would not start. Not so. There was testimony that when asked by one of plaintiff's representatives to start a vehicle, defendant "consistently" was unable to do so for at least one or two of the cars. In addition, some cars were not registered. And, as shown above, there was testimony about the improper height of shrubs.

Finally, that there was contrary evidence that might support defendant's position is irrelevant. It is necessary only that there be sufficient evidence to support the judgment. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.)

3. Impermissibly Vague Ordinances

Defendant asserts the SCMC ordinances are void for vagueness. He sets out the general principle that vague laws are not enforceable and relies on the testimony of a plaintiff's code enforcement manager that "overgrown vegetation is somewhat objective or subjective, depending on how you look at it." He also argues other code officers had varying opinions as to what was overgrown. But neither of these supports defendant's argument.

First, whether an ordinance is void for vagueness is a question of law (see *In re Cox* (1970) 3 Cal.3d 205, 224) so the code enforcement managers' opinions are

irrelevant. Second, as we will explain, the ordinances are precise enough to inform the public what it must do to comply with them.

A statute is presumptively certain unless it is ““clearly, positively, and unmistakably”” uncertain. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1107.) ““A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.” [Citation.]” (*Ibid.*; see *Echevarrieta v. City of Rancho Palos Verdes* (2001) 86 Cal.App.4th 472, 483 [““substantial amount of vagueness is permitted in California zoning ordinances””].)

Here the language of the ordinances is sufficiently clear for a reasonably intelligent person to understand. The phrase “overgrown vegetation” in SCMC section 8.52.030(G) uses common enough words such that a “reasonable and practical construction can be given to” them. These are not technical words such that someone would have to guess at their meaning.

Further, SCMC section 12.24.020(A)(1) and (B) requires property owners to maintain landscape to avoid its encroachment onto streets and sidewalks to prevent interference with their use. It is clear from reading these ordinances that a property owner must keep the landscape trimmed. Importantly, if defendant originally had any doubt as to the meaning of the ordinances, it would have been cleared up when he was first cited in 1994 or the many times thereafter and during conversations with plaintiff’s representatives. Thus, defendant failed to defeat the ordinance’s presumed certainty.

Defendant briefly and in conclusory fashion claims SCMC section 10.52.010 is also void for vagueness. This ordinance provides that storing “abandoned, wrecked, dismantled or inoperative vehicles” on private property constitutes a nuisance. Defendant’s only argument is that he was not advised by plaintiff’s representatives until

2011 they believed parking an unregistered vehicle violated the ordinance. This argument fails too.

SCMC section 10.52.010(B) defines an “inoperable vehicle” as one that “does not qualify to be operated upon a highway under the vehicle code.” Vehicle Code section 4000, subdivision (a)(1) bans driving an unregistered vehicle on the streets. This language is all plain enough for a reasonably intelligent person to understand. Moreover, defendant admitted he had been advised of ordinances prohibited him from storing inoperable vehicles since 1995. Again, defendant did not overcome the presumption the ordinance is certain.

4. Fourth Amendment Violation

Defendant maintains plaintiff entered the Property without his consent or a warrant. He argues any evidence obtained in violation of his Fourth Amendment rights should be stricken. This argument misses the mark.

The exclusionary rule generally does not apply to civil actions but “only when the ‘proceedings so closely [identify] with the aims of criminal prosecution as to be deemed “quasi-criminal.” [Citations.]’ [Citation.]” (*Park v. Valverde* (2007) 152 Cal.App.4th 877, 883 [rule not applicable to suspension of driver’s license for drunk driving].) Defendant has not provided any authority to show this action to enjoin a nuisance is quasi-criminal nor have we found any. Thus, there is no basis for plaintiff to rely on the exclusionary rule, even assuming there was evidence of improper entry.

5. Unclean Hands

Defendant argues the injunction is barred by plaintiff’s unclean hands. He complains plaintiff introduced pictures of neighboring homes that did not have overgrown landscape but did not present pictures of two other homes whose shrubs and bushes were over 30 feet high.

Unclean hands may be a defense in a matter where the plaintiff has acted inequitably. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 432.) “““The

misconduct which brings the clean hands doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.”

[Citation.]” (*Ibid.*)

The transaction at issue is defendant’s violations of the various ordinances, not the irrelevant evidence plaintiff omitted at trial. Plaintiff had no obligation to introduce pictures of a neighbor’s alleged offense. And even if neighboring shrubs exceed 30 feet, that is a separate issue that has nothing to do with defendant’s violations.

6. *Biased Hearing Officer*

Defendant claims the hearing officer who conducted the 2009 administrative hearing on his appeal of a citation was biased based on several grounds. First, after the hearing, the officer wrote to plaintiff thanking it for the business. He also recommended plaintiff refer the matter to the city attorney for action. Finally, although the citation did not include a violation for inoperable vehicles, the hearing officer determined vehicles were inoperable. This argument also fails.

First, Government Code section 53069.4, subdivision (b)(1) provides for a 20-day appeal period after service of the order. Here the record shows the decision was served on defendant in 2009. There is no evidence he filed an appeal from that decision. Thus his claim in this appeal is time-barred.

Even on the merits the argument is unavailing. There is nothing improper about plaintiff paying the hearing officer. Hearing officers are routinely paid. Nothing in the record supports defendant’s speculation that plaintiff “would only choose officers that rule in their favor.” Rather, “[w]e must start . . . from the presumption that the hearing officers . . . are unbiased. [Citations.]” (*McIntyre v. Santa Barbara County Employees’ Retirement System* (2001) 91 Cal.App.4th 730, 735.) Defendant has not rebutted that presumption.

Finally, because we do not have the exhibits, we cannot review the citation itself, and we will not find an error where the record does not demonstrate same.

(*Gonzalez v. Rebollo* (2014) 226 Cal.App.4th 969, 977.)

7. *Equitable Estoppel*

Defendant argues that because plaintiff did not advise him he was in violation of the ordinances, it is equitably estopped from enforcing them. Defendant contends that, between September 2009 until the trial commenced in 2012, plaintiff's agents told him the Property complied with the ordinances and failed to answer his request plaintiff advise him about any violations. Not so.

“‘The elements of the doctrine [of equitable estoppel] are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations.]’” (*City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 279.) “Equitable estoppel ‘will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. [Citations.]’” (*Ibid.*; *West Washington Properties, LLC v. Department of Transportation* (2012) 210 Cal.App.4th 1136, 1148 [equitable estoppel does not excuse landowner from complying with land use requirements even if relying on public entity's express representations].)

Since defendant failed to include record references and failed to make an argument in connection with this issue, we assume the basis of his claim is a letter he sent to plaintiff in mid-September 2009, of which we do not have a copy. The evidence is unclear as to whether plaintiff responded to the letter. But even if not, it does not support an equitable estoppel claim.

There was plenty of evidence to show defendant was well aware he was in violation, including the hearing in November 2009 on his appeal of the administrative

citation issued to him, and the decision upholding the citation. Further, in July 2010 plaintiff filed this action, which gave defendant notice. He was still in violation when trial began in October 2012. Therefore, defendant could not reasonably rely on the lack of a response to his letter in 2009.

8. Adequate Remedy at Law

Defendant claims the injunction should not have issued because there was an adequate remedy at law, i.e., fines or an abatement action. He also maintains that when he was cited he complied. For example, he claims that in 2012 when he was told it was a violation to store unregistered vehicles he removed them. He also argues the injunction should not have issued because there were only a limited number of violations.

The history of this case belies this argument. Defendant may have complied to a certain extent at certain points. But the evidence shows that for all or most of 19 years defendant was in violation in some way. Plaintiff's citations and criminal actions did not spur defendant to clean the Property and keep it clean. Even when he cured some of the violations, he did not cure all of them or he caused new violations.

Defendant has violated ordinances since 1994. Neighbors have complained to little avail, and have been forced to live with the unkempt Property for these long years. Thus, it is reasonable to believe there would be numerous abatement actions, itself a factor supporting the injunction. (Code Civ. Proc., § 526, subd. (a)(6); Civ. Code, § 3422, subd. 3.) By defendant's own admission he may be a hoarder. The court did not abuse its discretion in issuing the injunction.

9. Attorney Fees

Defendant challenges the award of attorney fees, purportedly \$83,000. This argument is without merit.

Defendant asserts plaintiff filed the case in a court of limited jurisdiction, and the court subsequently transferred it to a court of unlimited jurisdiction. This "indicate[d]" plaintiff's counsel "was dealing with an issue of first impression[,] thus

substantially increasing the cost of the action and resulting in unconscionable legal fees of \$83,000.” The argument is insufficient to support defendant’s claim.

Courts of limited jurisdiction may not issue permanent injunctions, thus requiring a transfer of the action.

Defendant argues in his reply brief that plaintiff should have proposed a settlement rather than filing the action, and that failure to do so is a factor to be considered in determining attorney fees. The case on which defendant relies to support this claim, *Vasquez v. State of California* (2008) 45 Cal.4th 243, is inapt. It considered private attorney general fees, not before us here.

We have no evidence as to the basis of the calculation of the amount of fees and defendant has not shown why the amount of the fees awarded was unconscionable.

DISPOSITION

The judgment is affirmed. Plaintiff is entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

O’LEARY, P. J.

RYLAARSDAM, J.