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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

OAK TREE ALTERNATIVE CARE,

Plaintiff and Respondent,

v.

CITY OF BEAUMONT OFFICE OF
ADMINISTRATIVE APPEALS,

Defendant;

CITY OF BEAUMONT,

Real Party in Interest and Appellant.

G052266

(Super. Ct. No. RIC1109687)

O P I N I O N

Appeals from a judgment and postjudgment order of the Superior Court of Riverside County, John W. Vineyard, Judge. Affirmed in part and reversed in part as to the judgment, reversed and remanded for determination of attorney fees as to the postjudgment order. Request for judicial notice. Denied.

Ward & Ward and Alexandra S. Ward for Real Party in Interest and Appellant.

Law Offices of J. David Nick, J. David Nick; Law Offices of Joseph T. Rhea, Joseph T. Rhea; Law Office of E.D. Lerman and Editte D. Lerman for Plaintiff and Respondent.

* * *

INTRODUCTION

The City of Beaumont (the City) issued administrative citations to Oak Tree Alternative Care (Oak Tree) for operating a medical marijuana dispensary in violation of the City's ordinances. The City imposed civil penalties against Oak Tree for each day it continued to operate the dispensary. While pursuing an administrative appeal of the citations, Oak Tree deposited the civil penalties with the City. The administrative hearing officer upheld the citations and ordered Oak Tree to continue to pay \$1,000 per day in civil penalties until it ceased operating as a dispensary. Oak Tree deposited a total of \$664,000 in civil penalties.

Oak Tree filed a petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 (section 1094.5) to challenge the administrative hearing officer's decision. Oak Tree contended, for the first time, that the maximum amount of civil penalties allowed by the City's ordinances was \$100,000 and, as a consequence, Oak Tree was entitled to a refund of deposits greater than that amount. In the meantime, the federal government initiated an asset seizure proceeding against Oak Tree, obtained an asset seizure warrant, and seized the \$664,000 that Oak Tree had deposited with the City. Oak Tree did not file a claim against the federal government or otherwise contest the warrant or the asset seizure proceeding. Ultimately, the money seized by the federal government was declared forfeited.

The superior court upheld the legality of the administrative citations but agreed with Oak Tree that the City could not impose more than a total of \$100,000 in civil penalties. As part of the judgment in the administrative mandamus action, the superior court ordered the City to refund to Oak Tree all civil penalties on deposit in

excess of \$100,000. The superior court denied the City's motion for determination of prevailing party status and attorney fees. The City appeals from the judgment in the administrative mandamus action and from the postjudgment order denying the motion for attorney fees.

We affirm in part, reverse in part, and remand. Although Oak Tree did not raise the issue of the amount of civil penalties in the administrative hearing, it was excused from exhausting administrative remedies because the administrative hearing officer exceeded his jurisdiction by upholding and awarding civil penalties in an amount greater than permitted by the City's ordinances. We therefore affirm the judgment insofar as it orders reduction of the civil penalties to \$100,000.

The superior court erred, however, by ordering the City to refund the civil penalties in excess of \$100,000 to Oak Tree. The federal government, in an in rem proceeding, had seized and declared forfeited a cashier's check representing the money deposited with the City, and it is undisputed that Oak Tree never contested the federal asset seizure proceeding. Thus, when the seized deposits were declared forfeited, title to them passed to the federal government. Simply put, the City had nothing it could refund to Oak Tree. Finally, we reverse the order denying the City's motion for determination of prevailing party status and attorney fees and remand for the sole purpose of determining the amount of attorney fees to award the City.¹

FACTS AND ADMINISTRATIVE HEARING

I.

The City's Medical Marijuana Ordinances

In May 2009, the City adopted ordinance No. 951, which prohibited medical marijuana dispensaries within the City. The next month, the City adopted ordinance No. 954, which imposed a 45-day moratorium on the approval of medical

¹ In light of our decision, we deny the City's unopposed request for judicial notice.

marijuana collectives and cooperatives within the City, and ordinance No. 955, which amended the definition of “Medical Marijuana Cooperative or Collective” to include “cooperatives, collectives and/or associations of qualified patients with or without primary care givers.” Several weeks later, the City adopted ordinance No. 956, which extended the moratorium imposed by ordinance No. 954 for another 10 and a half months. That moratorium was extended to May 18, 2011 by ordinance No. 966, adopted by the City in March 2010. We refer to these ordinances collectively as the City Medical Marijuana Ordinances.

II.

Administrative Citations and Civil Penalties Against Oak Tree

Oak Tree filed its articles of incorporation as a California nonprofit mutual benefit corporation in July 2009. Oak Tree, operating as Oak Tree AC LLC, previously had leased real property at 257 E. 6th Street in the City. Oak Tree constructed tenant improvements and, in August 2009, commenced operations as a medical marijuana dispensary on the premises. In the same month, Oak Tree submitted an administrative plot plan application and applied for a business license from the City to sell tobacco, tobacco products, and smoking devices. The City denied the application.

On August 10, 2009, Oak Tree’s business was visited by the City officials, police officers, and fire department personnel. They noticed “some type of marijuana facility.” Two days later, the City issued Oak Tree an administrative citation for operating a medical marijuana dispensary in violation of ordinance No. 951 and ordinance No. 954 and for operating a business without a business license. A fine was assessed at \$100 per day. The citation stated: “Each day a violation of this Code continues to exist shall constitute a new, separate, action and distinct violation.” Largely identical citations for the same violations were issued each day from August 13, 2009 through November 15, 2010. The citations issued from August 22 through August 31,

2009 imposed a fine of \$500 per day. The citations issued from September 1, 2009 through November 15, 2010 imposed a fine of \$1,000 per day.

III.

Administrative Appeal

In a letter dated August 17, 2009, Oak Tree's attorney notified the City that Oak Tree intended to contest the citations and requested a hearing within 15 days. The City notified Oak Tree's attorney that the City's municipal code required Oak Tree to prepay all civil penalties in order to appeal the citations. The City accepted the August 17, 2009 letter from Oak Tree's attorney as a notice of appeal of the citations. In a separate letter, the City notified Oak Tree's attorney that it would not be necessary to file a separate request for hearing for each of the daily citations, but Oak Tree would have to continue to deposit the daily civil penalties to preserve its appeal rights. Oak Tree later requested the City to cease issuing daily citations during the appeal process.

The administrative hearing was set initially in October 2009. For various reasons, including pending appellate court decisions on medical marijuana, the parties requested several continuances of the hearing date. The administrative hearing took place on November 18, 2010, which was 463 days after the first citation was issued. By the date of the hearing, Oak Tree had deposited \$433,000 in civil penalties.

Oak Tree made three arguments in its administrative hearing brief: (1) the City Medical Marijuana Ordinances were unconstitutional or preempted by federal law; (2) the City was estopped from enforcing the City Medical Marijuana Ordinances against Oak Tree; and (3) the City was liable to Oak Tree under the Tom Bane Civil Rights Act (Civ. Code, § 52.1). In its administrative hearing closing brief, Oak Tree made several more arguments: (1) the hearing officer had authority to determine whether the City Medical Marijuana Ordinances were valid and enforceable; (2) the opinion in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 was distinguishable; (3) Oak Tree acted in compliance with state and local laws; (4) enforcement of the City Medical

Marijuana Ordinances against Oak Tree was barred under principles of estoppel, unclean hands, and/or due process violations; and (5) enforcement of the City Medical Marijuana Ordinances against Oak Tree constituted an unlawful taking of property and liberty. Oak Tree did not assert the amount of civil penalties was in excess of the legal maximum or the hearing officer lacked authority to uphold the amount of civil penalties imposed by the City.

The administrative hearing officer issued a written decision in March 2011. The hearing officer noted the parties had stipulated that Oak Tree had deposited \$433,000 in civil penalties for the period from August 12, 2009 through November 15, 2010. The hearing officer concluded he did not have jurisdiction to decide whether the City Medical Marijuana Ordinances were constitutional (except for issues of notice), rejected Oak Tree's estoppel defense, and concluded: "[T]he City . . . has met the proof [*sic*] that . . . Oak Tree . . . has received proper notice of the violations, continued to operate in violation of these various ordinances up to and including the date of the hearing, November 18, 2010. There was no evidence or defense presented that would deem the imposition of the fine to be unreasonable for the time periods alleged and the citations. Accordingly, this ruling is in favor of the City . . . and against . . . Oak Tree." Oak Tree was ordered to pay \$1,000 per day in civil penalties from November 16, 2010 through the date it ceased operating as a medical marijuana dispensary.

Oak Tree continued to operate its medical marijuana dispensary at least through the date on which the administrative hearing decision was issued, and continued to deposit civil penalties until that date. Oak Tree deposited, in cash, a total of \$664,000 in civil penalties. It is possible that Oak Tree continued operating as a medical marijuana dispensary until June 21, 2011, when its operations were raided by agents for the Allied Riverside Cities Narcotic Enforcement Team (ARCNET).²

² ARCNET is a multiagency narcotics task force made up of Riverside County sheriff's deputies and police officers from cities in Riverside County.

IV.

Federal Asset Seizure Proceeding

In June 2011, agents of ARCNET raided Oak Tree's operations, seized Oak Tree's assets, and forced Oak Tree out of business. In November 2011, the United States District Court issued a seizure warrant declaring a cashier's check in the amount of \$664,000 held by the City and representing Oak Tree's deposit of civil penalties was subject to forfeiture. The warrant commanded agents of the United States Department of Homeland Security (Homeland Security) to seize the cashier's check. It is undisputed that the seizure warrant was executed and the cashier's check seized by Homeland Security.

In January 2012, Oak Tree received official notice from the United States Customs and Border Protection that the cashier's check had been seized and was subject to forfeiture under federal law. The notice explained that Oak Tree had the option to challenge the seizure and oppose a forfeiture action by filing a petition for the remission of forfeiture or by filing a seized asset claim form pursuant to 18 United States Code section 983(a)(2). In March 2012, the United States Customs and Border Protection notified Oak Tree it had to submit a seized asset claim form to prevent a summary forfeiture proceeding against the cashier's check. No evidence was presented that Oak Tree submitted such a claim. In May 2012, Homeland Security declared the cashier's check forfeited pursuant to 18 United States Code section 981.

ADMINISTRATIVE MANDAMUS PROCEEDINGS

In June 2011, Oak Tree filed a petition for writ of administrative mandamus in the superior court pursuant to section 1094.5 to challenge the administrative hearing decision. The petition alleged the administrative hearing officer acted in excess of jurisdiction by imposing a civil penalty against Oak Tree, which was greater than the

maximum amount permitted for a continuing violation under the City’s municipal code. That allegation was based on the City Municipal Code former section 1.17.300, subdivision D, which stated, in relevant part: “The maximum legal rate for administrative civil penalties shall be one thousand dollars (\$1,000.00) per day, per violation. The maximum legal amount of administrative civil penalties shall be one hundred thousand dollars (\$100,000.00), plus interest on unpaid penalties as provided in [former] Section 1.17.090, per parcel of real property, including any structures located thereon, for all violations of this code, including continuing violations, existing at the time.”³

Oak Tree filed an amended petition for writ of administrative mandamus in December 2011. The amended petition reiterated the allegation that the administrative hearing officer acted in excess of jurisdiction by imposing a civil penalty against Oak Tree, which was greater than the maximum amount permitted under the City’s municipal code for a continuing violation. The amended petition asserted a claim for \$180,000 in damages based on the amount that Oak Tree had spent on tenant improvements and rent during construction of the tenant improvements. The City moved to sever the legal issues for separate determination before trial on Oak Tree’s claim for money damages. The superior court granted the motion.

A hearing on legal issues was set in October 2012. After the parties filed memoranda of points and authorities in support of and in opposition to the amended petition, the superior court continued the hearing and requested supplemental briefing on three issues. Among those issues was whether Oak Tree had raised in the administrative hearing the issue whether the civil penalties imposed were greater than the maximum allowed by the City’s municipal code for a continuing violation. The parties submitted

³ Citations to the City Municipal Code are to the sections in effect at the relevant time.

supplemental briefs. On December 21, the superior court heard oral argument and took the matter under submission.

In February 2013, the court issued a minute order and notice of ruling, reducing the civil penalties to \$100,000 and denying the amended petition in all other respects. In the notice of ruling, the court concluded the administrative hearing officer was “without jurisdiction” to impose civil penalties totaling more than \$100,000, which was the maximum permitted under the City Municipal Code former section 1.17.300, subdivision D. “Here,” the court stated, “the hearing officer upheld the \$433,000 fines imposed and ordered [Oak Tree] to pay \$1,000 per day from November 16, through the date of ceasing operation. As this is in excess of the \$100,000 limit imposed by the municipal code, a writ shall issue ordering the fines imposed on [Oak Tree] to be reduced to \$100,000 in compliance with Beaumont Municipal Code [former] section 1.17.300, subdivision (D).”

The City filed a motion for a new trial and motion to vacate the judgment. The superior court denied both motions. Oak Tree dismissed its claim for damages.

A judgment on the amended petition (the Judgment), entered in August 2013, ordered the issuance of a peremptory writ of mandamus to set aside the part of the administrative hearing decision ordering Oak Tree to pay \$1,000 per day in fines from November 16, 2010 through the date on which Oak Tree ceased operating as a medical marijuana dispensary. The Judgment stated the writ shall command (1) that “all fines imposed on [Oak Tree] by [the administrative hearing officer] shall be reduced to \$100,000.00 or less, plus interest” and (2) the City “to refund all fines deposited by [Oak Tree] in excess of \$100,000.00 or less, pursuant to *Beaumont Municipal Code* [former] Section 1.17.270 (E).” The City filed a notice of appeal from the Judgment.

After entry of the Judgment, the City filed a motion for determination of prevailing party status and for an award of \$69,316.50 in attorney fees. The City asserted it was entitled to recover attorney fees under Code of Civil Procedure section 1033.5,

subdivision (a)(10) because the City Municipal Code former section 1.17.020 and Government Code section 38773.5, subdivision (b) authorized such recovery. The superior court found there was no prevailing party and, by minute order, denied the City's motion. The City filed a notice of appeal from the order denying its motion for determination of prevailing party status and for an award of attorney fees.

DISCUSSION

I.

Background Law and Standard of Review

“Administrative mandamus is the form of judicial review used to challenge an agency's adjudicatory decision, *i.e.*, a decision by an agency regarding private rights or interests, when a hearing is required by law to be given before the agency issues that decision.” (1 Cal. Administrative Mandamus (Cont.Ed.Bar 3d ed. 2016) Nature of Proceeding, § 1.1, p. 1-2.) Section 1094.5 lays out the procedure for judicial review by administrative writ of mandamus of final administrative decisions. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 810.) “The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (§ 1094.5, subd. (b).)

The substantial evidence standard of review applies in an appeal from a decision in a proceeding under section 1094.5, subdivision (b). (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 810.) “We view the evidence in the light most favorable to the judgment, resolving all conflicts in the evidence and drawing all inferences in support of the judgment.” (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 225.)

II.

Oak Tree Was Not Required to Exhaust Administrative Remedies to Challenge the Amount of Civil Penalties.

A. Exhaustion of Administrative Remedies Rule

Based on the City Municipal Code former section 1.17.300, subdivision D, the superior court reduced the amount of civil penalties imposed against Oak Tree to, at most, \$100,000. The City argues the superior court erred by reducing the civil penalties because Oak Tree failed to raise the issue of excessive penalties in the administrative appeal hearing and, therefore, failed to exhaust administrative remedies.

If an administrative remedy is provided by statute, a party must exhaust that remedy before resorting to the courts. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080; *Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 371 (*Hagopian*).) “The rationale for the rule is that an agency is entitled to learn the contentions of interested parties before litigation arises, so it will have an opportunity to address the contentions and perhaps render litigation unnecessary. [Citation.] To advance this purpose an interested party must present the exact issue to the administrative agency that is later asserted during litigation or on appeal. [Citation.] General objections, generalized references or unelaborated comments will not suffice. [Citation.] “[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.” [Citation.]’ [Citation.]” (*Hagopian, supra*, at p. 349.)

“The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level. [Citation.]’ [Citation.]” (*Hagopian, supra*, 223 Cal.App.4th at p. 371.)

Oak Tree pursued an administrative remedy provided under chapter 1.17 of the City Municipal Code by initiating an administrative hearing to contest the citations. Under former section 1.17.270, subdivisions B and C of the City Municipal Code, if the

administrative hearing officer upheld the citation, then “the amount of the fine set forth in the citation shall not be reduced or waived for any reason” (City Mun. Code, former § 1.17.207, subd. B) and “the fine amount on deposit with the City shall be retained by the City” (City Mun. Code, former § 1.17.207, subd. C). Oak Tree did not seek a reduction in or return of fines in the event the administrative hearing officer upheld the citations, and, in the administrative hearing, did not present the issue of reduction in fines that it raised in the administrative mandamus hearing in the superior court.

Oak Tree argues it exhausted administrative remedies because *the City* cited the City Municipal Code former section 1.17.300 in its briefs submitted to the administrative hearing officer. Former section 1.17.300 granted the City authority to assess administrative penalties and set the maximum legal rate of penalties. But citing the municipal code section is not the same as raising the issue of excessive fines. To exhaust administrative remedies, it is necessary to “present the exact issue to the administrative agency that is later asserted during litigation or on appeal.” (*Hagopian, supra*, 223 Cal.App.4th at p. 371.) “[G]eneralized references or unelaborated comments” are not sufficient. (*Ibid.*) The City’s citation to former section 1.17.300 would not give the administrative hearing officer the opportunity to evaluate and respond to a claim by Oak Tree that the fines imposed were excessive.

B. Exception to Exhaustion of Administrative Remedies Rule

An exception to the exhaustion of administrative remedies rule arises when the agency acts without jurisdiction. An agency action taken without jurisdiction may be challenged at any time. (*Vo v. Board of Medical Quality Assurance* (1991) 235 Cal.App.3d 820, 826.) Exhaustion of administrative remedies is excused when the agency lacks subject matter jurisdiction, that is, when “the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties.” (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment*

Relations Bd., *supra*, 35 Cal.4th at pp. 1081-1082.) Lack of jurisdiction in the fundamental sense arises when “there is ‘an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.’” (*Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 538.)

Lack of jurisdiction also arises when the tribunal grants relief in excess of its authority: “Even where there is jurisdiction over the parties and the general subject matter, fundamental jurisdiction may be absent when a trial court purports to grant relief that it has no authority to grant.” (*Thompson Pacific Construction, Inc. v. City of Sunnyvale*, *supra*, 155 Cal.App.4th at p. 538, citing *Grannis v. Superior Court* (1905) 146 Cal. 245, 255; see *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 20 [“The granting of relief, which a court under no circumstances has any authority to grant, has been considered an aspect of fundamental jurisdiction for the purposes of declaring a judgment or order void.”].) “In accordance with these principles, it has been held in this state, in matters pertaining to civil service and in other contexts, that when an administrative agency acts in excess of, or in violation, of the powers conferred upon it, its action thus taken is void. [Citations.]” (*Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 104.)

The quintessential example of a court acting without fundamental jurisdiction for granting unauthorized relief is a default judgment that exceeds the specific amount of damages alleged in the complaint. (E.g., *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489.) In that situation, the trial court exceeds its jurisdiction under Code of Civil Procedure section 580, and the judgment is void to the extent it awards excess damages. (*Becker v. S.P.V. Construction Co.*, *supra*, at pp. 494-495; see *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826, 829-830; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 864-865.) The void portion of the default judgment awarding relief greater than the amount sought by the complaint may be set aside at any time. (*In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 886.)

The administrative hearing officer in this case had the authority under the City Municipal Code to hear and resolve Oak Tree’s appeal of the citations. (See City Mun. Code, former §§ 1.17.250, 1.17.260, 1.17.270.) But the administrative hearing officer had authority only to uphold a maximum of \$100,000 in civil penalties. The City Municipal Code former section 1.17.300, subdivision D stated, “[t]he maximum legal amount of administrative civil penalties shall be one hundred thousand dollars (\$100,000.00), plus interest on unpaid penalties . . . , per parcel of real property.” By upholding civil penalties of \$433,000 against Oak Tree, and by ordering it to pay \$1,000 per day in civil penalties going forward, the administrative hearing officer granted relief he had no authority to grant and, therefore, acted in excess of fundamental jurisdiction.

For that reason, the decision of the administrative hearing officer was void to the extent it ordered relief in excess of \$100,000 plus interest and could be challenged by Oak Tree by petition for writ of administrative mandamus without exhausting administrative remedies. Thus, the superior court did not err by reducing to \$100,000 the amount of civil penalties against Oak Tree.

III.

The Superior Court Erred by Ordering the City to Refund Civil Penalties Because the Federal Government Had Seized the Penalties and Declared Them Forfeited.

The superior court erred, however, by ordering the City to refund the excess civil penalties to Oak Tree. When the Judgment issued in August 2013, Homeland Security already had seized the civil penalties deposited with the City pursuant to a seizure warrant issued by the United States District Court, and the seized property had been declared forfeited. The City, likening the administrative mandamus action to an in rem or quasi in rem proceeding, argues the seizure of the deposited penalties rendered Oak Tree’s request for a refund moot.

A. Background

By way of background, the superior court was aware of the seizure by Homeland Security of the civil penalties deposited by Oak Tree. The City alleged mootness, based on federal seizure, as an affirmative defense to Oak Tree's amended petition for writ of administrative mandamus. Before the hearing on the amended petition, the City submitted to the superior court copies of the seizure warrant and supporting affidavit.

At the hearing in December 2012, the court stated: "But for the complication of the federal seizure order, my tentative would be to grant the petition as to that issue and order a refund of \$333,000. However, that federal seizure order brings into play at least two of the issues raised by the [C]ity. One is mootness. The other is unclean hands. [¶] The bottom line is that this is a court of equity. Because the federal government has seized the assets of [Oak Tree], including the fines that were paid to the [C]ity and I want to clarify that. That is my understanding from reading it, that the . . . seizure warrant included those funds. The [C]ity transferred those funds to the federal government." Oak Tree's counsel argued the City took it upon itself to contact Homeland Security and notify it of the deposit of civil penalties. The City did so, according to Oak Tree, in order to avoid having to refund the deposit to Oak Tree and to reap a reward of up to 80 percent of the seized money. In response, the City argued there was no evidence to support Oak Tree's argument that the City had somehow conspired with Homeland Security to "ace" Oak Tree out of the deposited funds.

The superior court's notice of ruling, issued on February 8, 2013, did not mention the issue of seizure of assets by Homeland Security. The City moved for a new trial and, in connection with the motion, submitted (1) a notice of seizure, dated January 9, 2012, addressed to Oak Tree; (2) a notice of seizure, dated January 9, 2012, addressed to Oak Tree's owner; (3) a letter, dated February 24, 2012, from Oak Tree's attorney to the United States Customs and Border Protection; (4) a notice of forfeiture,

dated March 7, 2012, addressed to Oak Tree; (5) a notice of forfeiture, dated March 7, 2012, addressed to Oak Tree's owner; and (6) a declaration of administrative forfeiture, dated May 17, 2012. In opposition to the City's motion for a new trial, Oak Tree argued the City "initiated the Federal forfeiture action in an attempt to forum shop, seeking a judicial forum where [Oak Tree] may not raise a medical marijuana defense."

At the hearing on the City's motion for a new trial, the court affirmed its ruling that the City lacked authority to impose fines in excess of \$100,000. The court stated, "I'm not going to condition that on what the federal government does with the funds."

B. The Deposited Penalties Were Seized and Declared Forfeited.

The superior court erred by ordering the City to return any portion of the civil penalties to Oak Tree. Oak Tree and its owner were both given notice of seizure from the United States Customs and Border Protection. Oak Tree's counsel acknowledged receiving the notice. Neither Oak Tree nor its owner did anything in response. Both Oak Tree and its owner received the notice of forfeiture from Homeland Security. Again, neither did anything in response. The funds seized were the subject of a declaration of administrative forfeiture pursuant to 18 United States Code section 981 and 19 United States Code section 1609(b). All of those facts were undisputed.

We issued an order inviting the parties to submit letter briefs addressing this issue: "Did the trial court err by ordering real party in interest and appellant City of Beaumont to refund all fines 'in excess of \$100,000.00 or less' in light of the force and effect given the declaration of asset forfeiture . . . under 19 United States Code section 1609(b)." The City and Oak Tree each submitted a letter brief.

Homeland Security seized the cashier's check and declared it subject to forfeiture under 18 United States Code section 981. The administrative or "summary" forfeiture procedures set forth in 19 United States Code sections 1602 through 1618

apply to a forfeiture under 18 United States Code section 981. (*U.S. v. Cretacci* (9th Cir. 1995) 62 F.3d 307, 310.) “By statute, the government has the authority, in some circumstances, to effect an administrative or ‘summary’ forfeiture and thereby to avoid a judicial proceeding. [Citations.] . . . [¶] Under the administrative forfeiture procedure, if the property is not claimed within a specified period of time, the agency that seized the property may declare it ‘forfeited’ and sell it ‘in the same manner as merchandise abandoned to the United States[.]’ [Citation.]” (*Ibid.*)

To effect an administrative forfeiture, the federal agency first must publish notice of the seizure “for at least three successive weeks in such manner as the Secretary of the Treasury may direct.” (19 U.S.C. § 1607(a)(4).) Then, “[w]ritten notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.” (*Ibid.*) After notice is given, a party has 20 days in which to file a claim. (*Id.*, § 1608.) If no claim is filed, the seized property is deemed summarily forfeited. (*Id.*, § 1609(a).)

A federal forfeiture action is an in rem proceeding. (See *U.S. v. Funds in the Amount of \$239,400* (7th Cir. 2015) 795 F.3d 639, 641.) Oak Tree received the required notices but did not file a claim. “[A]n owner who receives notice of the intended forfeiture and fails to claim an ownership interest in the property has effectively abandoned it.” (*U.S. v. Cretacci, supra*, 62 F.3d at p. 310.) By failing to file a claim, Oak Tree abandoned any claim to ownership of the deposited penalties and defaulted in the civil forfeiture action. (*Ibid.*; *U.S. v. Amiel* (E.D.N.Y. 1995) 889 F.Supp. 615, 621.) The seized property therefore could be declared administratively forfeited. (19 U.S.C. § 1609; see *U.S. v. Castro* (9th Cir. 1996) 78 F.3d 453, 456-457; *Martin v. Leonhart* (D.D.C. 2010) 717 F.Supp.2d 92, 97; *In re Seizure of 2007 GMC Sierra SLE Truck* (D.S.C. 2014) 32 F.Supp.3d 710, 714.)

“A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a

district court of the United States.” (19 U.S.C. § 1609(b).) A decree of forfeiture in a federal judicial forfeiture proceeding has the effect of vesting title to the forfeited property in the United States government as of the date of the offending conduct which led to the forfeiture proceedings. (*Ibid.*; see 18 U.S.C. § 981(f) “[All right, title, and interest in property [subject to forfeiture] shall vest in the United States upon commission of the act giving rise to forfeiture under this section.”].)

In this case, once the deposited penalties had been seized and declared forfeited by the federal government, the City had nothing to return to Oak Tree.⁴ Title to the deposited penalties had vested in the federal government. Because the deposited penalties had been declared forfeited, and Oak Tree had not contested the forfeiture, the City did not have title to those penalties and could not refund the money to Oak Tree. The superior court erred by ordering the City to return something which it did not have in its possession, and to which it did not have title.

Oak Tree argues that once the administrative hearing officer made his decision, the City had the right to retain the deposited civil penalties pursuant to the City

⁴ The treatment of deposits under the Civil Code provides a useful analogy. A depositary must deliver, on demand, the thing deposited to the person for whose benefit the deposit was made, unless a third party has a lien on the thing deposited. (Civ. Code, § 1822.) If any proceedings are “taken adversely” to the interest of the person for whose benefit the deposit was made, and that proceeding “may tend to excuse the depositary from delivering the thing,” then the depositary must promptly give notice to the person for whose benefit the deposit was made. (*Id.*, § 1825.) Failure to provide notice required by section 1825 may subject the depositary to liability for conversion. (*Byer v. Canadian Bank of Commerce* (1937) 8 Cal.2d 297, 300-301.) Conversely, if proper notice is given, and the result of the proceeding excuses return of the deposit, the depositary cannot be liable for failing to return the deposit.

In this case, Homeland Security gave Oak Tree the notice of seizure, the notice of forfeiture, and the declaration of asset forfeiture. Oak Tree did not contest any of the notices and did not file a claim. The result of the seizure proceeding—equivalent to an adverse proceeding under Civil Code section 1825—was the forfeiture of the deposit, which excused the City from returning the deposit to Oak Tree.

Municipal Code former section 1.17.270, subdivision C.⁵ No party requested a stay, and the superior court did not issue a stay, pending the administrative mandamus action. Thus, according to Oak Tree, the deposited penalties went into the City's general funds and were in the City's exclusive possession when seized by federal authorities. But Oak Tree very much claimed an ownership interest in the deposited penalties and sought their return. Oak Tree does not deny that the deposited penalties constituted a res that could be seized; indeed, Oak Tree argues the penalties were a res that was subject to superior court in rem jurisdiction. The cashier's check, though apparently written with the City as the payor, represented \$664,000 Oak Tree had deposited as fines. Oak Tree does not dispute the \$664,000 derived from activity or transactions rendering the money subject to forfeiture under 18 United States Code section 981(a). The federal authorities treated the deposited penalties as a res subject to seizure. Oak Tree, by failing to file a claim and defaulting in the federal forfeiture proceeding, conceded that to be the case and abandoned any claim of ownership to the deposited penalties represented by the cashier's check.

C. Out-of-state Authority

In its letter brief, Oak Tree relies on *State v. King* (2012) 218 N.C.App. 384 [721 S.E.2d 327], a decision of the North Carolina Court of Appeals. In that case, the defendant was indicted on several counts of drug-related offenses, and local law enforcement officers seized cash and other items from her. (*Id.*, 721 S.E.2d at pp. 328-329.) The defendant and the state entered into a plea agreement by which the defendant would plead guilty to one count of misdemeanor possession. (*Id.*, 721 S.E.2d at p. 329.) One condition of the agreement was that the state agreed to return the seized

⁵ The City Municipal Code former section 1.17.270, subdivision C stated: "If the Administrative Hearing Officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City."

property to the defendant. (*Ibid.*) The state later claimed it could not return the cash seized from the defendant because it had been turned over to federal authorities pursuant to federal law. (*Ibid.*) The North Carolina Court of Appeals held this promise by the state to return the seized money was enforceable because there was no requirement that “*the exact funds seized* must be returned to defendant.” (*Id.*, 721 S.E.2d at p. 333.)

The opinion in *State v. King* does not reveal whether the defendant challenged the federal forfeiture proceedings, which, we believe, is significant. A more analogous and better reasoned case out of North Carolina is *City of Concord, N.C. v. Robinson* (M.D.N.C. 2012) 914 F.Supp.2d 696 (*Robinson*), in which the defendant did not challenge the federal forfeiture proceedings. In that case, police officers of the City of Concord, North Carolina (Concord), arrested the defendant on drug charges and seized over \$17,000 from her hotel room. (*Id.* at p. 699.) While the defendant’s motion to return the seized money was pending in state court, the FBI, at the request of the Concord Police Department, initiated federal forfeiture proceedings. (*Ibid.*) The defendant received notice of the federal forfeiture but did not object, and the money was administratively forfeited to the United States. (*Id.* at p. 700.) The defendant later pleaded guilty to the state criminal charges and, without mentioning the federal forfeiture, asked the state court to return the seized money. (*Ibid.*) The state court so ordered. (*Ibid.*) Concord informed the state court of the federal forfeiture, but the court refused to set aside its order directing Concord to return the money and ruled that Concord had acted illegally. (*Ibid.*)

Concord brought an action in federal district court for a declaration that Concord had acted lawfully when it turned the money over to the FBI pursuant to federal forfeiture law and that the state court had no jurisdiction to issue rulings concerning the money once it had been seized by the FBI. (*Robinson, supra*, 914 F.Supp.2d at p. 700.) The defendant filed a counterclaim asserting that Concord had acted unlawfully in turning the money over to the FBI while her state court motion was pending. (*Ibid.*)

In granting, in part, Concord's motion for summary judgment, the district court noted: "[The defendant]'s failure to protect her rights in the federal administrative forfeiture proceeding and subsequent request to the state court for the return of the money certainly carries a whiff of forum shopping. Because [Concord] was likely to get 80 percent of the money back for its internal use if the federal forfeiture was successful and would get nothing if disposition of the money was left up to the Superior Court, and because [Concord] did not appeal the Superior Court's decision, there is the same unpleasant whiff of forum shopping around [Concord]'s conduct. Whether [Concord]'s conduct was illegal or resulted in an invalid federal forfeiture is, however, a different question, and one made more difficult to answer by the awkward procedural history of this case and related issues of state-federal comity." (*Robinson, supra*, 914 F.Supp.2d at p. 700.)

The district court concluded that, under North Carolina law, the state court exercised only in personam jurisdiction, not in rem or quasi in rem jurisdiction, over the seized money by virtue of the criminal prosecution of the defendant. (*Robinson, supra*, 914 F.Supp.2d at pp. 709-711.) Once the FBI began the federal forfeiture proceedings, and the defendant received notice of the forfeiture, the defendant's exclusive means of challenging the forfeiture was to avail herself of the remedies provided by federal law. (*Id.* at p. 713.) The defendant did not do so, "and her failure to avail herself of the procedures described in the notice extinguished her rights in the seized funds." (*Ibid.*) As a consequence, the federal forfeiture was valid and enforceable. (*Ibid.*) Because the federal court, by means of forfeiture proceeding, had exclusive in rem jurisdiction over the money seized, the state court could not order the money returned to the defendant. (*Id.* at p. 710.)

Significantly too, the district court concluded the defendant was not entitled to a return of the money seized, even though Concord received much of that money back from the FBI, because she did not contest the federal forfeiture. (*Robinson, supra*, 914

F.Supp.2d at p. 713.) The district court explained: “Because it operated *in rem*, [citation], the forfeiture established the United States as the owner of the seized funds and terminated the rights of all other persons and entities, including [the defendant], to possession or ownership of the funds. [Citation.] [Concord] does not have to return to [the defendant] any money it may receive from the United States via equitable sharing.” (*Ibid.*)

Robinson is analogous to this case in many important respects. By initiating the forfeiture action, the federal authorities in this case obtained in rem jurisdiction over the money deposited as penalties by Oak Tree. The superior court, like the state court in *Robinson*, never obtained in rem or quasi in rem jurisdiction over the seized money, and, in fact, never obtained in personam jurisdiction over the deposited penalties because criminal proceedings against Oak Tree were never initiated. Oak Tree, like the defendant in *Robinson*, received notice of the federal forfeiture action but did not file a claim or otherwise challenge the validity of the forfeiture. When the money seized from the City (in the form of the cashier’s check) was declared forfeited, the federal government obtained all title and interest to it to the exclusion of all others and, therefore, the superior court here, like the state court in *Robinson*, could not order return of the money to Oak Tree. Here too, Oak Tree suggests the City will receive some or most of the seized funds back from federal authorities. But as explained in *Robinson*, that eventuality is irrelevant.

D. *Section 1094.5, Subdivision (g)*

Oak Tree argues that under section 1094.5, subdivision (g), the City could not raise a mootness defense because Oak Tree had complied with the decision of the administrative hearing officer while pursuing administrative mandamus review. The final sentence of section 1094.5, subdivision (g) reads: “Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have

been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.”

We note two things. First, a plain reading of section 1094.5, subdivision (g) leads to the interpretation that it only bars a mootness defense when the matter is rendered moot by the completion of or compliance with the penalty imposed. That is not the case here. The City’s mootness defense was based on events occurring after Oak Tree had complied with the penalty imposed. Second, the issue here is not mootness, but whether the superior court erred by ordering the City to return something it did not have. Because the deposits had been forfeited to the federal government, the superior court erred by ordering the City to return them to Oak Tree.

E. California Cases Cited by Oak Tree

Oak Tree also contends the superior court acquired jurisdiction over the deposited penalties held by the City before the initiation of the federal forfeiture action. Accordingly, Oak Tree contends, the superior court had exclusive jurisdiction over the deposits and they could not be turned over to federal authorities. In support of this contention, Oak Tree relies on *People v. \$25,000 United States Currency* (2005) 131 Cal.App.4th 127, 135, and *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, 366. Neither case helps Oak Tree.

In *People v. \$25,000 United States Currency, supra*, 131 Cal.App.4th at page 129, police officers seized \$25,000 in cash in executing a search warrant of a residence for drugs. The district attorney issued a receipt for the seized currency with notification that forfeiture proceedings were underway. (*Id.* at p. 130.) Paul L. Fields, Jr., the party claiming ownership of the currency seized, filed a claim for the currency in the superior court. (*Ibid.*) The currency was transferred to the federal government

without a formal turnover order, and state forfeiture proceedings were not commenced. (*Ibid.*) The federal government filed a forfeiture complaint, and the currency was declared forfeited. (*Ibid.*) The federal district court vacated the declaration of forfeiture after Fields demonstrated he had not received adequate notice of the forfeiture proceedings. (*Ibid.*) A second federal forfeiture complaint was ordered dismissed on the ground the superior court had acquired exclusive in rem jurisdiction over the seized currency. (*Id.* at pp. 130-131.) Months later, the superior court granted the district attorney's request for a formal order to release the seized currency to the federal government for forfeiture proceedings. (*Id.* at p. 131.) The turnover order was issued after the statute of limitations had expired on a state forfeiture proceeding. (*Id.* at p. 135.) Fields moved to set aside the release order and to have the seized currency returned to him. (*Id.* at p. 131.) The superior court denied Fields's motion and reaffirmed the prior turnover order. (*Ibid.*) Fields challenged the order denying his motion. (*Ibid.*)

The Court of Appeal affirmed, but first addressed the Attorney General's contention that the court lacked appellate jurisdiction or that the appeal had become moot because the currency (the res) had been transferred to the federal government. (*People v. \$25,000 United States Currency, supra*, 131 Cal.App.4th at pp. 133-134.) The Court of Appeal concluded it had constructive in rem jurisdiction because Fields had filed a motion to vacate the turnover order and then appealed the denial of that motion. (*Id.* at p. 133.) The appeal was not moot, the Court of Appeal concluded, because another federal forfeiture action had been initiated (and then stayed) pending the appeal, which left open the possibility that the federal district court would direct the return of the currency to the superior court. (*Id.* at p. 134.)

Oak Tree cites *People v. \$25,000 United States Currency* for the proposition that once assets are seized by state authorities, those assets come within the superior court's jurisdiction and cannot be transferred to federal authorities without a formal turnover order. Here, the civil penalties were not involuntarily seized by the City.

The superior court in this case never obtained in rem or in personam jurisdiction over the civil penalties. The City did not gratuitously transfer the deposits over to the federal authorities but turned them over in compliance with a seizure warrant—the validity of which Oak Tree never contested.

The issue presented in *City of Garden Grove v. Superior Court, supra*, 157 Cal.App.4th at page 362, was whether medical marijuana seized by police during a traffic stop had to be returned to the party from whom it was taken. The trial court ordered the marijuana returned. (*Ibid.*) The City of Garden Grove, whose police officers had seized the marijuana, challenged that ruling. (*Ibid.*) Garden Grove argued the owner of the marijuana was not entitled to its return, even though he lawfully possessed it under California law, because marijuana is generally prohibited under federal law. (*Ibid.*) The Court of Appeal affirmed, reasoning that the marijuana had been possessed lawfully under California law and federal drug laws did not preempt the right to the return of wrongfully seized property. (*Id.* at p. 391.) By way of background to understand the basis for the Garden Grove’s interest in the seized property, the Court of Appeal explained that when law enforcement officers seize property in anticipation of a criminal prosecution, the officers have no right to retain the seized property because they become its custodians on behalf of the court. (*Id.* at p. 366.) In this case, the City did not seize the civil penalties, in anticipation of a criminal prosecution or otherwise. As such, the City did not hold the deposited funds as guardian on behalf of the superior court.

IV.

Attorney Fees

The superior court denied the City’s motion for determination of prevailing party status and for an award of \$69,316.50 in attorney fees on the ground there was no prevailing party.

The legal basis for the City’s motion for attorney fees is not in dispute. Under Code of Civil Procedure section 1033.5, subdivision (a)(10)(B), attorney fees are

recoverable as costs when authorized by statute. Government Code section 38773.5, subdivision (b) permits a city to provide, by ordinance, for recovery of attorney fees in any action or administrative proceeding. The City Municipal Code former section 1.17.020 permitted the City to recover “administrative costs” (capitalization & boldface omitted), defined to include attorney fees, incurred in enforcing a code violation.

What is in dispute is whether the City was the prevailing party and, therefore, entitled to recover attorney fees. Code of Civil Procedure section 1032, subdivision (a)(4) defines prevailing party this way: “‘Prevailing party’ includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the ‘prevailing party’ shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not”

Based on the Judgment, the superior court could conclude that neither party prevailed. The court had upheld the legality of the administrative citations, but had concluded the maximum amount of civil penalties was \$100,000 and ordered the City to refund the excess. Our conclusion that the court erred by ordering the City to refund the civil penalties changes that. Code of Civil Procedure section 1032, subdivision (a)(4) gives the court discretion to determine prevailing party status in only two circumstances: (1) when any party “recovers other than monetary relief” and (2) “in situations other than as specified.”⁶ (See *Cussler v. Crusader Entertainment, LLC* (2012) 212 Cal.App.4th

⁶ The prevailing party for the award of costs under Code of Civil Procedure section 1032 is not necessarily the prevailing party for an award of attorney fees in contract actions under Civil Code section 1717. (*Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1142.)

356, 371-372.) The City now has the net monetary recovery because it does not have to return to Oak Tree penalties in excess of \$100,000 and has recovered nonmonetary relief in that the superior court found the administrative citations were lawful.

Our decision makes the City the prevailing party under Code of Civil Procedure section 1032, subdivision (a)(4). We therefore remand for the sole purpose of determining the amount of the City's attorney fees award.

DISPOSITION

The portion of the Judgment directing the issuance of a writ commanding the City "to refund all fines deposited by [Oak Tree] in excess of \$100,000.00 or less, pursuant to *Beaumont Municipal Code* [former] Section 1.17.270" is reversed. In all other respects, the Judgment is affirmed. The order denying the City's motion to determine prevailing party status and for attorney fees is reversed. The matter is remanded for the sole purpose of determining the amount of attorney fees to be awarded to the City.

The City shall recover its costs on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.