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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

CHARLES R. FOSTER et al.,

Plaintiffs and Appellants,

v.

DEPARTMENT OF MOTOR VEHICLES
et al.,

Defendants and Respondents.

H041107
(Santa Clara County
Super. Ct. No. 109CV157274)

I. INTRODUCTION

Plaintiffs Charles R. Foster and Darcy E. Foster purchased a vehicle from another individual in the 1980's. The vehicle was originally manufactured in the early 1960's as a Shelby Cobra. The vehicle purchased by plaintiffs, however, did not contain the manufacturer's original frame and instead consisted of a newly fabricated frame among other new parts. The prior owner also cut out the area of the original frame that contained the vehicle identification number (VIN) and then had the same VIN stamped into the newly fabricated frame without authorization from defendant Department of Motor Vehicles (DMV). After plaintiffs bought the vehicle, the vehicle was physically inspected by defendant Department of the California Highway Patrol (CHP) on more than one occasion, and the DMV allowed plaintiffs to register the vehicle under the original VIN for approximately 20 years. In 2007, the DMV indicated to plaintiffs that it was

considering whether to register the vehicle as a “specially constructed vehicle” (Veh. Code, § 580)¹ with a new VIN. Plaintiffs believed that such a registration would substantially diminish the value of the vehicle.

Plaintiffs filed a petition for writ of mandate against defendants DMV and CHP to compel the renewal of their vehicle registration with the original VIN, and not as a specially constructed vehicle with a new VIN. Defendants later demurred to an amended petition, contending among other arguments that plaintiffs’ vehicle no longer contained the original frame and therefore plaintiffs could not use the original VIN. Defendants further contended that the DMV had the authority to correct registration errors. The trial court sustained the demurrer without leave to amend.

On appeal, we understand plaintiffs to contend that they alleged facts sufficient to state a claim for mandate relief based on the DMV’s ministerial duty under the Vehicle Code to renew the registration of their vehicle with the original VIN and not as a specially constructed vehicle. We also understand plaintiffs to argue that they are entitled to a writ of mandate to compel an exercise of discretion under the proper interpretation of the law, to correct an abuse of discretion, and to remedy a violation of their due process rights.

For reasons that we will explain, we will affirm the judgment.

II. FACTUAL BACKGROUND

According to the allegations of plaintiffs’ amended petition and its exhibits, the vehicle with the original VIN CSX2174 was a Shelby Cobra manufactured in the early 1960’s. The vehicle was owned by various people over the years.

In 1980, the registered owner at the time, Federick Reese, decided to “restore” the vehicle after determining that the chassis was bent and that the body needed reworking.

¹ All further statutory references are to the Vehicle Code unless otherwise indicated.

Stewart Hall, a “local fabricator” who specialized in Ford Cobra vehicles, assisted with the “restoration process.” Hall told Reese that it would be cheaper to replace the original chassis rather than to repair it. Hall subsequently “fabricated a new replacement chassis” for the vehicle. The “remanufactured chassis” was an “exact reproduction” of the original chassis. A “replacement body” was affixed to the new chassis.

On Cobra vehicles, the VIN is stamped into the chassis. Reese “cut out the area of the original chassis” that “contained the VIN CSX2174.” Reese believed that by cutting out the VIN, “he was rendering the damaged and discarded chassis and body parts into scrap parts.”² Reese had the same VIN “stamped into the new chassis.” The VIN stamped into the new chassis was in the same location as the VIN on the original frame. Reese also “installed a new original design Shelby Cobra FIA cutback door, competition body to the new chassis.”

Plaintiffs purchased the “mostly restored” vehicle from Reese in February 1986. When plaintiffs purchased the vehicle, they knew that the chassis had been replaced. Plaintiffs received “the cut-out section of the original chassis containing the VIN CSX2174 . . . as part of the purchase transaction.” The DMV registered the vehicle in plaintiffs’ names with the original VIN, CSX2174, in February 1986.

Plaintiffs believed that the transfer of the VIN from one chassis to another was legal as long as it was approved by the DMV. In 1987, they called the DMV and were told to contact the CHP for approval because “the program was administered for the DMV by the CHP.”

Plaintiff Charles Foster contacted a CHP officer and requested “confirmation” of the VIN on the vehicle. The CHP officer “contacted CHP auto theft requesting assistance with this unusual request,” according to a report later written by CHP Auto Theft

² Plaintiffs allege that Reese sold the damaged chassis to Matthew Grebe to use as parts.

Investigator Ed Glynn. Investigator Glynn inspected the vehicle, and plaintiff Charles Foster provided him with registration and bank loan papers listing plaintiff as the registered owner of the vehicle. Plaintiff reported that the vehicle frame had been damaged during racing and was replaced by the prior owner. Plaintiff later provided Investigator Glynn with a letter from Hall, the frame fabricator, describing the replacement frame. Investigator Glynn was informed that Hall stamped the VIN in the replacement frame.

Eventually, in March 1988, Investigator Glynn told plaintiffs that, “although the preferred process had not been followed by Federick Reese or the repairer, it was clear what had happened and what [plaintiffs] were trying to do.” Investigator Glynn indicated that the CHP sometimes attached a “ ‘blue tag’ to a chassis, but he did not think it was necessary in this case.” Upon Investigator Glynn’s request, plaintiff Charles Foster surrendered the segment of the original frame containing the manufacturer’s VIN for destruction.

According to Investigator Glynn’s March 1988 report, he requested registration information from all states regarding the VIN on plaintiffs’ vehicle. Investigator Glynn determined that the vehicle was registered in California, and he did not discover any out-of-state registration or any stolen vehicles during this search. The DMV thereafter continued to renew the vehicle registration annually.

In April 2005, the DMV sent plaintiffs a letter stating that it had “received information indicating that the vehicle description and identification number shown” on a 1990 certificate of title “may not properly describe [plaintiffs’] vehicle.” The DMV sought to determine “the correct make and [VIN]” of the vehicle and requested that form “REG 124,” entitled “Application for Assigned Vehicle Identification Number,” be completed and signed by a CHP “VIN officer, for verification only.” The DMV placed a vehicle license and title “stop” on the vehicle, which prohibited any further transaction involving the vehicle until the DMV received the completed form. On the enclosed form

REG 124, the DMV stated that the reason for the referral to the CHP was to “verify [the] make” of the vehicle.

In June 2005, CHP Officer Terri Neidigh physically inspected the vehicle and then completed the DMV form, REG 124. On the form, the officer indicated that the DMV had requested VIN verification, and the officer set forth the make, model, and VIN of the vehicle. The officer also indicated that the vehicle had previously been inspected by CHP Investigator Glynn, that the original VIN was cut out and surrendered to him, and that the VIN was stamped into a replica frame. The DMV thereafter renewed the vehicle’s registration in 2005.

The DMV did not notify plaintiffs of the need to renew the registration in 2006. In 2007, plaintiffs realized that the vehicle license tag had expired. They called the DMV and were told that a “stop” had been placed on the vehicle registration.

In an October 2007 letter, the DMV stated that it would determine whether plaintiffs’ “replica vehicle” may be “re-registered as a specially constructed vehicle,” upon plaintiffs’ completion of the following forms: “Application for Assigned Vehicle Identification Number” (form REG 124), “Application for Registration” (form REG 343), and “Statement of Construction” (form REG 5036). The DMV explained that the first form, REG 124, had to be signed by a CHP “VIN officer, who [would] assign a VIN to the vehicle.”

In 2008, CHP Officer Thomas Walitzer, while “acting as an agent of [the] DMV,” inspected the vehicle and plaintiffs’ documentation regarding the vehicle. Plaintiffs were informed that Officer Walitzer was going to “sign off on the DMV REG 124 form, verifying the CSX2174 VIN,” as Officer Neidigh and Investigator Glynn had previously done, but that Officer Walitzer’s supervisor believed the vehicle should be re-registered as specially constructed vehicle and have a new VIN assigned. Plaintiffs were not “formally advised” by defendants of the results of the inspection by Officer Walitzer.

III. PROCEDURAL BACKGROUND

A. Petition for Writ of Mandate and Motion for Judgment on the Pleadings

In 2009, plaintiffs filed a petition for writ of mandate against the DMV and the CHP. Plaintiffs sought to have their vehicle registration renewed with the original VIN, CSX2174, and not as a replica vehicle or a specially constructed vehicle with a new VIN.

The DMV and CHP filed answers and later a motion for judgment on the pleadings. The trial court granted the motion for judgment on the pleadings with leave to amend, after concluding that plaintiffs had failed to sufficiently allege (1) a duty owed by the CHP to plaintiffs, and (2) a ministerial duty owed by the DMV to register plaintiff's vehicle under the original VIN.

B. Amended Petition for Writ of Mandate

Plaintiffs filed a first amended petition for writ of mandate in January 2013 against the DMV and the CHP. Plaintiffs alleged that the DMV and the CHP were acting as an agent for each other. Plaintiffs also alleged that CHP Investigator Glynn, on behalf of the DMV, approved Reese's transfer of the VIN from the original damaged chassis to the replacement chassis, and that the CHP on behalf of the DMV again approved the vehicle's VIN in 2005. Plaintiffs further alleged that when the vehicle was inspected by the CHP in 1998, 2005, and 2008, the vehicle had been "repaired and/or restored by replacing parts." According to plaintiffs, if the vehicle was registered as replica or a specially constructed vehicle, its value would be "decimated" from \$475,000 or more, to \$75,000 or less.

In their amended pleading, plaintiffs sought a writ of mandate in the first cause of action. They also alleged a second cause of action for "equitable estoppel" and a third cause of action for declaratory relief. Plaintiffs sought renewal of the vehicle registration under the original VIN, and a determination that the vehicle had been "repaired and/or restored to its original design by replacing parts" such that the vehicle was not a "specially constructed vehicle" under the Vehicle Code. In their cause of action for

“equitable estoppel,” plaintiffs also alleged that they had been deprived of the use of the vehicle in violation of their due process rights under the federal and state Constitutions.

C. Demurrer

Defendants DMV and CHP filed a demurrer to plaintiffs’ amended petition on the ground that each of the three causes of action (writ of mandate, equitable estoppel, and declaratory relief) failed to state facts sufficient to constitute a cause of action. Among other arguments, defendants contended that under the Vehicle Code a vehicle’s true VIN is the one stamped on the frame by the manufacturer. Because plaintiffs’ vehicle no longer contained the original frame, plaintiffs could not use the original VIN. Further, because plaintiffs’ vehicle was built for private sale and use, and included newly fabricated parts, it must be registered as a specially constructed vehicle under the Vehicle Code.

Defendants further contended that the DMV had the authority to correct registration errors, citing section 8800, subdivision (a)(1) and (6), which permits the suspension, cancellation, or revocation of a vehicle’s registration. According to defendants, the DMV therefore had the authority and duty to cancel or revoke plaintiffs’ prior registration based on the fact that plaintiffs’ vehicle was not the original Cobra vehicle.

Defendants also argued that equitable estoppel did not apply against a government entity if the result would defeat a strong public policy. Defendants contended that if the DMV was required to register plaintiffs’ vehicle with the VIN from the old frame, the vintage car market and the public in general would be misled regarding the vehicle. Defendants further argued that the government’s failure to enforce a law does not estop the government from subsequently enforcing it.

Defendants also contended that the CHP was not a proper party because it had no duty or authority to process the registration of plaintiffs’ vehicle.

D. Opposition

Plaintiffs contended that the allegations of the amended petition were sufficiently stated. Among other arguments, plaintiffs contended that the allegations established that the CHP, as an agent of and at the request of the DMV, (1) authorized the transfer of the original VIN to the replacement frame in 1988 through Investigator Glynn's actions, and (2) verified the VIN in 2005 through Officer Neidigh's actions. Based on plaintiffs' compliance with the DMV's request in 2007 that the vehicle be examined again by the CHP to verify the VIN, plaintiffs contended that the DMV had no basis for refusing to renew the vehicle registration. Plaintiffs also argued that the CHP had failed to verify the VIN after its most recent inspection and had breached a duty to complete the REG 124 form. Plaintiffs further argued that defendants had violated plaintiffs' due process rights under the federal and state Constitutions, and that the DMV should be estopped from refusing to renew their registration.

E. Reply

In reply defendants continued to argue that the original vehicle no longer existed, that plaintiffs' vehicle had to be registered as a specially constructed vehicle with a new VIN, and that the DMV had the authority and duty to correct errors in registration under section 8800, subdivision (a)(1) and (6). Defendants also argued that a new VIN and the designation as a specially constructed vehicle "alerts the marketplace" that the vehicle is not the original Cobra. Defendants further contended that the DMV's interpretation of the Vehicle Code provision pertaining to specially constructed vehicles must be given "great deference." According to defendants, plaintiffs' due process claim was without merit.

F. Trial Court's Order and Judgment

A hearing was held on the demurrer. In a written order filed March 22, 2013, the court sustained the demurrer to the first cause of action for writ of mandate without leave to amend. The court determined that plaintiffs had never been the owners of an original

1964 Shelby Cobra or the owners of the original VIN. The court characterized plaintiffs' vehicle as a "composite vehicle" that was comprised of "various original parts assembled around a non-original replacement chassis." The court also determined that plaintiffs' petition was "replete with factual and legal conclusions." After refusing to accept those allegations as true, the court concluded that plaintiffs failed to establish that the DMV had authorized, or had a ministerial duty to authorize, the transfer of the VIN from the original vehicle to the vehicle purchased by plaintiffs. Rather, the petition established that "the DMV never exercised its discretion to authorize the transfer of the VIN from the Shelby Cobra to the composite vehicle," and the registration of the composite vehicle under the VIN belonging to the original vehicle "was an error the DMV had no duty to renew."

The trial court also struck the second cause of action for equitable estoppel and third cause of action for declaratory relief under Code of Civil Procedure section 436, subdivision (b), because plaintiffs failed to obtain leave to amend before adding those new causes of action. The court further determined that, even if the causes of action were properly included in the amended petition, plaintiffs failed to state sufficient facts to constitute a cause of action.

In April 2014, a judgment of dismissal was filed.

IV. DISCUSSION

On appeal, we understand plaintiffs to challenge the trial court's ruling regarding the first cause of action for a writ of mandate, but not the rulings regarding the second and third causes of action (equitable estoppel and declaratory relief). Regarding the first cause of action, we understand plaintiffs to contend that they alleged facts sufficient to state a claim for mandate relief, based on the DMV's ministerial duty under the Vehicle Code to renew the registration of their vehicle with the original VIN and not as a specially constructed vehicle. We understand plaintiffs to further argue that they are entitled to a writ of mandate to compel an exercise of discretion under the proper

interpretation of the law, to correct an abuse of discretion, and to remedy a violation of their due process rights.

Before determining whether plaintiffs sufficiently alleged a basis for mandate relief under any of these theories, we first set forth the standard of review and address the parties' requests for judicial notice.

A. Standard of Review

“Interpretation of statutes and the sufficiency of pleadings are both questions of law and we review those matters de novo. [Citation.]” (*California Golf, L.L.C. v. Cooper* (2008) 163 Cal.App.4th 1053, 1063-1064.) In performing our independent review of the pleading, we assume the truth of all facts properly pleaded by the plaintiff. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6 (*Evans*).) “ ‘We also accept as true all facts that may be implied or inferred from those expressly alleged. [Citations.]’ [Citation.]” (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 925.) Further, “we give the [petition] a reasonable interpretation, and read it in context.” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).) But we do not assume the truth of “ ‘contentions, deductions or conclusions of fact or law.’ ” (*Evans, supra*, 38 Cal.4th at p. 6.)

We also consider matters that may be judicially noticed and facts appearing in the exhibits attached to the petition. (Code Civ. Proc., §§ 430.30, subd. (a), 1109; see *Schifando, supra*, 31 Cal.4th at p. 1081; *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.) If the attached exhibits conflict with the allegations in the petition, “we give preference to the exhibits. [Citation.] If the exhibits are ambiguous but can be construed as the plaintiffs . . . suggest, then we must accept their construction. [Citation.]” (*Requa v. Regents of University of California* (2012) 213 Cal.App.4th 213, 224.)

After reviewing the allegations of the petition, the attached exhibits, and the matters properly subject to judicial notice, we exercise our independent judgment as to

whether the petition states a cause of action as a matter of law. (See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) “We will affirm the court’s ruling if it is correct under any legal theory raised in the demurrer, whether the court relied on the theory or not. [Citation.]” (*Debro v. Los Angeles Raiders* (2001) 92 Cal.App.4th 940, 946.)

Additionally, “[i]f the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect. [Citation.]” (*Schifando, supra*, 31 Cal.4th at p. 1081.)

B. Requests for Judicial Notice

1. Plaintiffs

On appeal, plaintiffs seek judicial notice of excerpts from a December 2009 DMV manual regarding “Vehicle Industry Registration Procedures.” The excerpts pertain to VIN numbers, registration, DMV referrals to the CHP, and specially constructed vehicles. We understand plaintiffs to contend that the excerpts are the proper subjects of judicial notice because they are regulations (Evid. Code § 452, subd. (b)) and official acts of the executive department of California (*id.*, subd. (c)). Defendants do not oppose plaintiffs’ request.

We will assume that the manual excerpts are the proper subjects of judicial notice and we will grant plaintiffs’ April 24, 2015 request for judicial notice. None of the excerpts persuade us that plaintiffs have sufficiently stated a cause of action for the reasons we explain below.

2. Defendants

On appeal, defendants seek judicial notice of a request for judicial notice that they filed in the trial court in connection with a discovery dispute. In the court below, defendants requested judicial notice of (1) factual findings by a federal district court regarding the extent to which plaintiffs' vehicle was "reconstructed," (2) the true signification of the word "reconstruct," and (3) plaintiffs' admissions in discovery responses that certain parts of their vehicle were replaced. The trial court apparently granted defendants' request for judicial notice in part. On appeal, defendants contend that this court may take judicial notice of their request for judicial notice filed below pursuant to Evidence Code section 452, subdivision (d) [judicial notice may be taken of state court records]. Plaintiffs oppose defendants' request for judicial notice.

A reviewing court "shall take judicial notice of (1) each matter properly noticed by the trial court and (2) each matter that the trial court was required to notice under Section 451 or 453. The reviewing court may take judicial notice of any matter specified in Section 452. The reviewing court may take judicial notice of a matter in a tenor different from that noticed by the trial court." (Evid. Code, § 459, subd. (a).) However, "[o]nly relevant material is a proper subject of judicial notice, even where the Evidence Code provides in mandatory terms that matters be judicially noticed. [Citation.]" (*Hayward Area Planning Assn. v. City of Hayward* (2005) 128 Cal.App.4th 176, 182.)

Defendants fail to provide any argument or cite any legal authority establishing that the matters they sought to judicially notice in the trial court are the proper subjects of judicial notice. It is clear that judicial notice of "[t]he true signification of all English words" is proper. (Evid. Code, § 451, subd. (e).) However, it is also apparent that defendants are seeking judicial notice of some matters that are *not* the proper subjects of judicial notice. For example, "[j]udicial notice is properly taken of the *existence* of a factual finding in another proceeding, but not of the *truth* of that finding. [Citations.]" (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120, italics)

added; accord, *O’Neill v. Novartis Consumer Health, Inc.* (2007) 147 Cal.App.4th 1388, 1405.) Further, although a court may take judicial notice of discovery responses if “ ‘they contain statements of the [party] . . . which are inconsistent with the allegations of the pleading before the court,’ ” defendants in this case make no attempt to demonstrate that plaintiff’s allegations are inconsistent with the discovery responses of which defendants seek judicial notice. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 477.) Defendants also do not articulate the relevance of the matters they seek to judicially notice. Accordingly, we deny defendants’ December 24, 2014 request for judicial notice.

C. Writ of Mandate

We understand plaintiffs to argue that they have sufficiently alleged the right to a writ of mandate to (1) compel the performance of a ministerial act, (2) to compel an exercise of discretion under the proper interpretation of the law and to correct an abuse of discretion, and (3) to remedy a violation of their due process rights. We will consider each theory in turn.

1. Ministerial act

a. general legal principles

A traditional writ of mandate lies “to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station” (Code Civ. Proc., § 1085.) To obtain relief, the plaintiff must establish the existence of a public entity’s “clear, present, and ministerial duty where the [plaintiff] has a beneficial right to performance of that duty. [Citations.]” (*California Assn. of Professional Scientists v. Department of Finance* (2011) 195 Cal.App.4th 1228, 1236; see *County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653; *Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 490.) A ministerial act is one that the agency is required to perform in a prescribed manner in accordance with a mandate of legal authority, and without regard to the agency’s judgment concerning the propriety of the act, when a given state of facts

exists. (*Transdyn/Cresci JV v. City and County of San Francisco* (1999) 72 Cal.App.4th 746, 752.) Where the duties to be performed are defined “ ‘with such precision and certainty as to leave nothing to the exercise of discretion,’ ” the act performed pursuant to such a duty is defined as ministerial. (*Glickman v. Glasner* (1964) 230 Cal.App.2d 120, 125.) “Thus, ‘[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.’ [Citation.]” (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1267.)

In this case, in order to survive defendant’s general demurrer, plaintiffs had to allege facts sufficient to show that defendants had a clear and certain duty to renew the registration of the vehicle under the original VIN and not as a specially constructed vehicle. Plaintiffs and defendants rely on various provisions of the Vehicle Code to support their positions about whether such a duty exists.

b. *Vehicle Code provisions*

In construing statutory provisions, “our fundamental task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute. [Citation.] We begin with the language of the statute, giving the words their usual and ordinary meaning. [Citation.] The language must be construed ‘in the context of the statute as a whole and the overall statutory scheme, and we give “significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.” ’ [Citation.] In other words, “we do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’ [Citation.]” ’ [Citation.] If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we choose the construction that comports most closely with the Legislature’s apparent intent, endeavoring to promote rather than defeat the statute’s general purpose, and avoiding a construction that would

lead to absurd consequences. [Citation.]” (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.)

The Vehicle Code defines a VIN as “the motor number, serial number, or other distinguishing number, letter, mark, character, or datum, or any combination thereof, required or employed by the manufacturer or the [DMV] for the purpose of uniquely identifying a motor vehicle or motor vehicle part or for the purpose of registration.” (§ 671, subd. (a); see § 290.) Significantly, “[w]henver a vehicle is constructed of component parts identified with one or more different vehicle identification numbers, *the vehicle identification number stamped or affixed by the manufacturer or authorized governmental entity on the frame or unitized frame and body, as applicable, . . . shall determine the identity of the vehicle for registration purposes.*” (§ 671, subd. (b), italics added.)

Section 10750 prohibits a person from intentionally defacing, destroying, or altering the VIN of a vehicle without written authorization from the DMV. (§ 10750, subd. (a); see § 290.) A person who knowingly alters, destroys, falsifies, forges, or removes VINs, with the intent to misrepresent the identity or prevent the identification of vehicles, for the purpose of sale or transfer, is guilty of a public offense. (§ 10802.) If a VIN is removed from or otherwise destroyed on a vehicle, the DMV “may assign a distinguishing [VIN]” to the vehicle, and the vehicle must be registered under that VIN. (§ 4166.) Section 10750 prohibits a person from placing or stamping a VIN on a vehicle, except a VIN assigned to the vehicle by the DMV. (§ 10750, subd. (a).) However, section 10750 “does not prohibit the restoration by an owner of the original vehicle identification number when the restoration is authorized by the [DMV], nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon new motor vehicles or new parts thereof.” (§ 10750, subd. (b).)

The Vehicle Code provides that “[a] ‘specially constructed vehicle’ is a vehicle which is built for private use, not for resale, and is not constructed by a licensed

manufacturer or remanufacturer. *A specially constructed vehicle may be built from (1) a kit; (2) new or used, or a combination of new and used, parts; or (3) a vehicle reported for dismantling, as required by Section 5500 or 11520, which, when reconstructed, does not resemble the original make of the vehicle dismantled. A specially constructed vehicle is not a vehicle which has been repaired or restored to its original design by replacing parts.*” (§ 580, italics added.)

Vehicles must be currently registered. (§ 4000, subd. (a)(1).) “The public interests served by the requirement that automobiles be registered has been addressed by the California Supreme Court: ‘The requirements for registration were enacted in the interests of public welfare, and one of the purposes for the legislation is to afford identification of vehicles and persons responsible in cases of accident and injury.’ [Citations.] Another purpose is the protection of innocent purchasers. [Citation.]” (*Halajian v. D & B Towing* (2012) 209 Cal.App.4th 1, 13.) “Furthermore, registration is an effective, logical way to achieve the legitimate public interest in identifying cars and trucks, as well as their owners.” (*Ibid.*)

The Vehicle Code provides that the DMV “may refuse registration or the renewal or transfer of registration of a vehicle . . . [¶] . . . [i]f the department is not satisfied that the applicant is entitled thereto under this code.” (§ 4751, subd. (a).) Moreover, the DMV “may suspend, cancel, or revoke the registration of a vehicle” when the DMV “is satisfied that the registration . . . was fraudulently obtained or erroneously issued” or “[w]hen the registration could have been refused when last issued or renewed.” (§ 8800, subd. (a)(1), (6).)

c. analysis

As plaintiffs acknowledge on appeal, the Vehicle Code generally provides that the VIN used for registration of a vehicle must be the VIN affixed on the frame by the manufacturer. (§ 671, subs. (a) & (b).) In this case, according to the allegations of plaintiffs’ amended petition and the attached exhibits, plaintiffs’ vehicle does *not* contain

the manufacturer's original frame and the VIN affixed to that frame by the manufacturer. Rather, plaintiffs' vehicle is comprised of a different frame that the prior owner had fabricated for the vehicle. Further, the VIN was stamped into the fabricated frame by the prior owner and/or the frame fabricator, neither of whom were authorized to do so. (See §§ 671, subds. (a) & (b), 4166, 10750, subds. (a) & (b).) The VIN on the original frame was cut out and ultimately surrendered to the CHP. Under the circumstances, where plaintiffs' vehicle does not contain the original frame and VIN affixed by the manufacturer, and is instead comprised of a fabricated frame with a VIN stamped by someone who was not authorized to do so, the Vehicle Code does not require registration of plaintiffs' vehicle with the VIN from the fabricated frame. As plaintiffs are not "entitled" under the Vehicle Code to registration with the VIN from the fabricated frame, the DMV "may refuse registration or the renewal . . . of registration" of the vehicle. (§ 4751, subd. (a).)

We are not persuaded by plaintiffs' contention that the original vehicle still exists based on the purported "long standing criteria regarding provenance of classic motor cars" and the foreign authority they cite. Neither of these sources provides a legal basis for finding a ministerial duty on the part of the DMV or the CHP in this case.

Plaintiffs also contend that the DMV and CHP "retroactively authorized" the transfer or restoration of the original VIN to their vehicle pursuant to section 10750, subdivision (b), based on the CHP's inspections of the vehicle in the late 1980's and in 2005, and based on the DMV's registration renewals thereafter.

We are not persuaded by plaintiffs' argument. As set forth above, section 10750 prohibits a person from placing or stamping a VIN on a vehicle, except one assigned to the vehicle by the DMV. (§ 10750, subd. (a).) Subdivision (b) states that "[t]his section does not prohibit the restoration by an owner of the original vehicle identification number when the restoration is authorized by the [DMV]." (§ 10750, subd. (b).) Plaintiffs acknowledge that section 10750, subdivision (b), gives the DMV *discretion* to authorize

restoration of an original VIN. Accordingly, this subdivision cannot form the basis for a *ministerial duty* on the part of defendants to register plaintiffs' vehicle under the original VIN.

Further, even assuming plaintiffs' allegations are sufficient to establish that defendants authorized the restoration of the original VIN within the meaning of section 10750, subdivision (b), plaintiffs fail to establish that defendants were thereafter required to *continue* registering the vehicle under the original VIN, or otherwise legally precluded from requiring registration as a specially constructed vehicle with a new VIN. As we have explained, the DMV could properly determine that, under the Vehicle Code, a vehicle containing a new, fabricated frame must be registered as a specially constructed vehicle with a new VIN. Upon making that determination, the DMV could refuse to renew the registration of plaintiffs' vehicle under the original VIN because plaintiffs were not "entitled thereto under [the Vehicle Code]" (§ 4751, subd. (a)), or the DMV could suspend, cancel, or revoke plaintiffs' "erroneously issued" registration (§ 8800, subd. (a)(1); see also *id.*, subd. (a)(6)).

Plaintiffs also fail to allege sufficient facts establishing that their vehicle cannot be registered as a "specially constructed vehicle." (§ 580.) Plaintiffs contend that their vehicle is not a "specially constructed vehicle" because section 580 provides that "[a] specially constructed vehicle is not a vehicle which has been repaired or restored to its original design by replacing parts." (*Ibid.*) According to plaintiffs, their vehicle was "repaired or restored to its original design by replacing parts" (§ 580) because "the damaged chassis and body" of their vehicle was repaired "with newly fabricated identical replacements." Plaintiffs also rely on section 507.5, which pertains to remanufactured vehicles, to contend that the Vehicle Code contemplates that a repair may consist of replacing the frame.

We are not persuaded by plaintiffs' contention. As defendants point out, section 507.5 regarding remanufactured vehicles applies to vehicles constructed by a

“licensed manufacturer.” (*Ibid.*) There are no allegations in the amended petition to suggest that the prior owner Reese or the frame fabricator was a licensed manufacturer.

Further, section 580, regarding specially constructed vehicles, must be construed in the context of the Vehicle Code provisions pertaining to VINs. The Vehicle Code assigns primary importance to the VIN affixed to the original frame by the manufacturer, prohibits the destruction or alteration of a VIN, and places limitations on the assignment and stamping of a VIN on a vehicle. (§§ 671, subs. (a) & (b), 10750, subs. (a) & (b), 4166.) Thus, as we have explained, if the original manufacturer’s frame and associated VIN have been removed from a vehicle, the DMV is not *required* to register the subsequently constructed vehicle, with a new frame, under the original VIN. Because the original frame and VIN are no longer associated with the vehicle, the DMV may properly designate the vehicle with a new frame as a “specially constructed vehicle.” (§ 580.)

In sum, plaintiffs failed to allege sufficient facts establishing that defendants had a ministerial duty to register plaintiffs’ vehicle under the original VIN and not as a specially constructed vehicle.

2. Discretionary act

“Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his [or her] discretion (if he [or she] is required by law to do so) and to exercise it under a proper interpretation of the applicable law. [Citations.]” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442 (*Common Cause*)). In addition, “mandamus will lie to correct an abuse of discretion by an official acting in an administrative capacity.” (*Ibid.*; accord, *California Teachers Assn. v. Ingwerson* (1996) 46 Cal.App.4th 860, 865.) “When reviewing the exercise of discretion, ‘[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise’” (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547 (*American Board of Cosmetic Surgery*)).

“In general, when review is sought by means of ordinary mandate the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support; . . .” (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1786 (*McGill*); accord, *American Board of Cosmetic Surgery, supra*, at p. 547.)

Plaintiffs contend that mandate relief is appropriate to correct the DMV’s abuse of discretion and “erroneous interpretation” of section 580 “when it determined that the Shelby Cobra was a ‘specially constructed vehicle’ under [section] 580.” As we have explained, however, based on the allegations of plaintiffs’ amended petition and attached exhibits, plaintiffs fail to allege sufficient facts establishing that their vehicle was a “vehicle which has been repaired or restored to its original design by replacing parts” within the meaning of section 580, such that the DMV was precluded from determining that plaintiffs’ vehicle was a specially constructed vehicle. Plaintiffs’ allegations are thus insufficient to establish that the DMV failed to exercise its discretion under a proper interpretation of the applicable law (see *Common Cause, supra*, 49 Cal.3d at p. 442), or that the DMV abused its discretion by making a decision that was “arbitrary, capricious, or entirely lacking in evidentiary support” (*McGill, supra*, 44 Cal.App.4th at p. 1786).

Accordingly, we determine that plaintiffs failed to plead sufficient facts establishing that defendants failed to exercise their discretion under a proper interpretation of the law, or that defendants abused their discretion in making their determination.

3. Due process

We understand plaintiffs to contend that they are entitled to mandate relief because they have sufficiently alleged a due process violation. According to plaintiffs, their rights to due process were violated when the DMV determined that the vehicle was a specially constructed vehicle “without notice to [them] or opportunity to be heard and without any explanation of [the DMV’s] reasoning or the factual basis for its determination.”

Plaintiffs contend that their cause of action for mandate relief seeks to compel the DMV

to either renew their vehicle registration with the original VIN, or “provide the factual and legal basis for its determination that their [vehicle] is a ‘specially constructed vehicle’ under [section] 580, as well as provide [them] with an opportunity to respond.”

We are not persuaded by plaintiffs’ contentions. First, plaintiffs do not identify any language in the first cause of action for a writ of mandate that expressly alleges a due process violation. Further, none of the paragraphs cited by plaintiffs indicate that, in their first cause of action for mandate relief, they sought to compel the DMV to provide the factual and legal basis for its determination that their vehicle is a specially constructed vehicle and an opportunity to respond.

Moreover, although plaintiffs’ second cause of action entitled “equitable estoppel” alleges that the DMV “deprived [them] of their use of the [vehicle] without due process of law in violation” of the federal and state Constitutions, plaintiffs did not seek mandate relief in that cause of action. In addition, plaintiffs on appeal do not address the trial court’s order striking the second cause of action under Code of Civil Procedure section 436, subdivision (b) for failure to obtain leave to amend before adding the cause of action.

Second, even assuming the first cause of action for writ of mandate could be construed as alleging a due process violation, and assuming that plaintiffs are entitled to (1) notice of a determination that their vehicle is a specially constructed vehicle, (2) an opportunity to be heard, and (3) an explanation of the DMV’s reasoning, plaintiffs fail to allege sufficient facts to constitute a cause of action. According to the DMV’s October 2007 letter, which is attached to plaintiffs’ amended petition, the DMV informed plaintiffs that it was going to “determine if [their] vehicle may be re-registered as a specially constructed vehicle” upon completion of certain forms by plaintiffs and a CHP VIN officer, and upon the assignment of a VIN by the CHP. The letter further states that “[o]nce the documents are received they will be reviewed,” and the DMV would notify plaintiffs if any further documents or fees were required. Plaintiffs subsequently had

their vehicle inspected by CHP Officer Walitzer in 2008. Plaintiffs alleged in their amended petition that they were not “formally advised” by defendants of the “results” of Officer Walitzer’s inspection. However, plaintiffs further alleged that Officer Walitzer’s supervisor believed that the vehicle should be re-registered as a specially constructed vehicle with a new VIN assigned by the CHP. Plaintiffs alleged that this would have caused a “decimation of the intrinsic value of the COBRA.”

It is not clear from plaintiffs’ amended petition whether they completed and submitted the forms specified in the DMV’s October 2007 letter, whether the CHP assigned a VIN to the vehicle, and whether the DMV actually determined that the vehicle would be registered as a specially constructed vehicle. To the extent the DMV made such a determination, there are no allegations in plaintiffs’ amended pleading indicating that they were not given an opportunity to be heard regarding the determination, or that the DMV failed to provide an explanation of its reasoning. Plaintiffs vaguely allege that they “attempted unsuccessfully to receive assistance from the CHP officer supervising Officer Walitzer and from the DMV,” but plaintiffs do not allege the nature of the “assistance” they sought or otherwise explain on appeal why the allegation supports a due process claim.

On appeal, plaintiffs contend that “[o]nly in its demurrer did the DMV provide its reasoning or the factual basis for its determination” by indicating that the vehicle was a specially constructed vehicle due to the prior owner’s replacement of the chassis. As we have explained, plaintiffs fail to allege sufficient facts and provide a persuasive argument as to why the DMV is legally precluded, based on a statute or other legal authority, from determining that plaintiffs’ vehicle is a specially constructed vehicle. Under the circumstances, plaintiffs fail to allege sufficient facts establishing that they are entitled to mandate relief for a purported due process violation.

We understand that the DMV has registered plaintiffs’ vehicle under the original VIN for approximately 20 years. We also understand plaintiffs’ arguments in this case,

and that they brought this lawsuit “as a matter of principal” based on the DMV’s current position regarding registering the vehicle and the apparent need for a new VIN. As an intermediate court of appeal however, our task is limited to interpreting and applying the law. (*Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1533.) Based on our interpretation of the applicable law and the allegations of plaintiffs’ amended petition and the attached exhibits, we determine that there is no legal basis for the mandate relief sought by plaintiffs.

D. Leave to Amend

Plaintiffs have not argued or established that an amendment would cure the defects in the amended petition. Accordingly, no abuse of discretion has been shown in the trial court’s sustaining of defendants’ demurrer without leave to amend. (*Schifando, supra*, 31 Cal.4th at p. 1081.)

V. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.

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