

Civ. No. S253783

SUPREME COURT
FILED

MAY 29 2019

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

EDWARD STANCIL, Defendant and Petitioner

vs.

SUPERIOR COURT OF SAN MATEO COUNTY, Respondent

THE CITY OF REDWOOD CITY, Plaintiff and Real Party in Interest

After a Decision by the Court of Appeal
First Appellate District, Division Four
[Case No. A156100]
Petition from Order of the Superior Court
State of California, County of San Mateo
Honorable Susan L. Greenberg, Judge Presiding
San Mateo County Superior Court Case No. 18UDL00903

**OPPOSITION TO MOTION TO STRIKE REAL PARTY'S
MOTION FOR JUDICIAL NOTICE**

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CITY OF REDWOOD CITY

Real Party in Interest City of Redwood City (“City”) opposes Petitioner’s Motion to Strike the City’s Motion for Judicial Notice. The City sought judicial notice of two documents: (1) excerpts of the City’s Charter, and (2) a Reply Memorandum in Support of Writ Petition filed by Petitioner’s attorney in *Fambrough et al. v. Redwood City*, San Mateo County Superior Court Case No. 17CIV04680 (“Reply”). The Charter excerpts are relevant because they set forth the respective roles of the City Council and Board of Port Commissioners/Port Department with respect to certain Port Area matters—a topic about which Petitioner offers representations (including misrepresentations) in his briefs—and make clear that the City is the plaintiff in this action irrespective of whether the City Council or the Board of Port Commissioners provided direction to the City’s counsel and staff. The Reply Brief is relevant because it shows that Petitioner’s attorney believes the City may not evict anyone from Docketown Marina, no matter the circumstances, a plainly untenable position.

Curiously, in his Motion to Strike, Petitioner now contends that the Charter excerpts and Reply Brief are irrelevant because “[j]urisdiction does go to the right of possession, but is entirely inapposite at the MTQ stage, as well as in these statutory Writ Petitions and this Petition for Review to the Supreme Court.” (Motion to Strike, at 6.) That is a surprising change of position.

In the Superior Court, Petitioner argued that “a basis for the Motion to Quash is lack of capacity to sue Here the [City] Council lacks capacity and may not step into the shoes of the Port, as the Port’s agent, because the charter has specifically delineated in a constitutional manner,

where the Port jurisdiction ends and Council [*sic*] begins.” (RR00016.¹) The City explained that Petitioner was mistaken on the merits, as the City clearly has jurisdiction, and also argued that a *Delta*-styled motion is not the proper procedure to raise such a claim (RR00048)—which is the issue for review that has been granted. Since Petitioner continued to assert that the City lacks jurisdiction, the City requested judicial notice of City Charter excerpts to ensure that the Court has underlying law regarding the City’s organization and structure. In addition, the City requested judicial notice of the Reply Brief to show that the underlying contention of Petitioner’s counsel is to proscribe any City action to recover possession of City slips that have been used for residential purposes.

Finally, in his Reply Brief filed in this Court contemporaneously with his Motion to Strike, Petitioner effectively abandons the lack-of-capacity-to-sue argument and reverts to his argument that the Motion to Quash should have been granted on a different ground— that the correct branch of the Superior Court was not properly identified on the Summons or Complaint. (See Reply Brief, at 4.) While Petitioner presented this argument in the Superior Court (see, e.g., RR00015:15-18), which the City successfully opposed (see, e.g., RR00050:1-7, RR00351:11-16), it is not the issue for which review has been granted. However, in his Reply Brief, Petitioner has now reverted to his failed argument regarding the Court branch-identification and abandoned his argument about the City’s capacity to sue.

In sum, the documents for which the City seeks judicial notice are relevant to the issues for which the Court has granted review. However, to

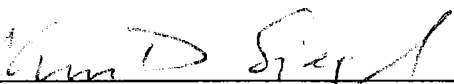
¹ “RR” refers to the record the City filed along with its Return Brief.

the extent that Petitioner has abandoned the arguments which relate to the grant of review, his petition for review has become moot. Thus, the Court should deny Petitioner's motion to strike, and take into account his change in position as the Court considers the petition for review.

Dated: May 29, 2019

Respectfully Submitted,

BURKE, WILLIAMS & SORENSEN, LLP

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**PROOF OF SERVICE RE OPPOSITION TO MOTION TO STRIKE REAL
PARTY'S MOTION FOR JUDICIAL NOTIC**

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CITY OF REDWOOD CITY

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to this action. My business address is 1901 Harrison St., Suite 900, Oakland, California, 94612.

On May 29, 2019, I served a copy of the within document(s):

OPPOSITION TO MOTION TO STRIKE REAL PARTY'S MOTION FOR JUDICIAL NOTIC

<input checked="" type="checkbox"/>	By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Oakland, California addressed to:
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~and~

The Hon. Susan L. Greenberg
San Mateo County Superior Court
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400 County Center
Redwood City, CA 94063

I declare under penalty of perjury that the following is true and correct, and executed on May 29, 2019.



SHARON I. HAGLE