

S19 1188

IN THE SUPREME COURT OF CALIFORNIA

VICENTE SALAS,
Petitioner and Appellant

vs.

SIERRA CHEMICAL COMPANY,
Defendant and Respondent

SUPREME COURT
FILED

MAR 16 2012

Frederick K. Ohnion Clerk

Deputy

OPPOSITION TO SECOND MOTION FOR JUDICIAL NOTICE

Appeal from the Court of Appeal
Third Appellate District, Case No. C064627
Superior Court of California, County of San Joaquin
Superior Court Case No. CV033425

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Plaintiff-Appellant Vicente Salas is requesting that the Court take judicial notice of two categories of documents: (a) the legislative history regarding Senate Bill 1818 (Moving Papers, Attachment D) and (b) Social Security informational materials (Moving Papers, attachments E and F). Defendant-Respondent Sierra Chemical Company submits that the Court should refuse to take judicial notice of either category of documents.

I. The Legislative History

A. The Legislative History was not Presented to The Lower Courts.

Salas' motion admits that "[j]udicial notice [of the subject legislative history] was not sought from the lower courts in this case."

What Salas really seeks is to have the record augmented, but that remedy is unavailable to him:

Reviewing courts generally do not take judicial notice of evidence not presented to the trial court. Rather, normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' . . .

(*Vons Cos., Inc. V. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [Citations omitted].) In *Vons*, the appellant requested that the Court take judicial notice, augment the record, or make a factual determination under Code of Civil Procedure section 909, so that the record would include deposition testimony given after the judgment was rendered, as

well as manuals referred to but not presented to the trial court. The Court found that there were no “exceptional circumstances” which would justify deviating from the rule that an appellate court will consider only matters which were part of the record at the time the judgment was entered.

(*Ibid.*) Nowhere does Salas’ motion even attempt to demonstrate the existence of “exceptional circumstances” which would allow the Court to deviate from the general rule and take judicial notice of the legislative history.

The rule applies even when the document is otherwise a proper subject of judicial notice. (*Brosterhous v. State Bar of California* (1995) 12 Cal.4th 315, 325.) Indeed, it has even been held that the reviewing court “ ‘should not take [judicial notice] if, upon examination of the entire record, it appears that the matter has not been presented to and considered by the trial court in the first instance.’ ” (*DeYoung v. Del Mar Thoroughbred Club* (1984) 159 Cal.App.3d 858, 863 [citations omitted].)

B. The Legislative History is Irrelevant.

California Rules of Court, Rule 8.252 (a) (1), requires the party seeking judicial notice to “state...[w]hy the matter to be noticed is relevant to the appeal... .”

Salas argues that the legislative history is “relevant to this appeal in that questions of the Legislature’s intent in enacting SB 1818 are

material to its construction and interpretation in this matter.” (Moving Papers.)

Legislative history is only relevant “[i]f [the Court’s] examination of the statutory language leaves doubt about its meaning... . [Citations.]”

(*The People v. Terry Eugene Birkett* (1999) 21 Cal.4th 226, 231.)

Furthermore, the Court “...must follow the statute’s plain meaning, if such appears, unless doing so would lead absurd results. (Citations.)”

(*Id.* at 231-232.)

Salas’ Opening Brief argues that SB 1818 is clear on its face:

SB 1818 is an unambiguous declaration that California labor and employment laws apply equally to all workers in this state irrespective of their immigration status.”) (Opening Brief, p. 8.) And later in the brief, Salas declares that “SB 818 could hardly be clearer.” (Opening Brief, p. 10.)

Salas’ position that the statute is unambiguous is inconsistent with his request that the Court take judicial notice of its legislative history.

II. The Social Security Informational Materials.

A. The Social Security Informational Materials were not Presented to The Trial Court.

Here again Salas is seeking is to have the record augmented with evidence which was not presented to the courts below. And here also Salas makes no effort to demonstrate “exceptional circumstances” which could allow the Court to judicially notice the evidence.

B. The Materials are Not the Proper Subject of Judicial Notice.

The judicial noticeability of the Social Security informational materials is governed by the Evidence Code section 452 (made applicable to the appellate courts by Evidence Code section 459 (a)). Section 452 gives the Court discretion to judicially notice “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evidence Code section 452 (h).)

Here, Salas claims that the Social Security informational materials support his argument that “...the SSA may inadvertently issue the same Social Security number to more than one person.” (Moving Papers.) In particular, Salas seeks to use a “Social Security Bulletin” and a “Annual Performance Plan” to prove specific factual allegations regarding Social Security’s alleged screening procedures and the percentage of time that the Social Security Administration mistakenly assigns incorrect Social Security numbers (albeit only 0.1% of the time). (Opening Brief, p. 34-35, fn. 37.)

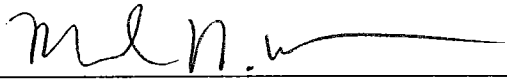
What Salas fails to tell the Court is that such factual allegations are only admissible by way of judicial notice if the party seeking such notice provides the court with sufficient information to determine that such facts

are “of reasonably indisputable accuracy.” (*Whispering Pines Mobile Home Park, Ltd. V. City of Scotts Valley* (1985) 180 Cal.App.3d 152, 162.) And Salas does not even attempt to make such a showing.

Dated: March 16, 2012

Respectfully submitted,

FREEMAN, D’AIUTO, PIERCE, GUREV
KEELING & WOLF

By 

MICHAEL N. MORLAN

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CERTIFICATE OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is 1818 Grand Canal Boulevard, Suite 4, Stockton, California 95207. I served the foregoing document entitled:

OPPOSITION TO SECOND MOTION FOR JUDICIAL NOTICE

Service by United States Mail:

√ by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, FREEMAN, D'AIUTO, PIERCE, GUREV, KEELING & WOLF, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service .

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TRIAL COURT:

Clerk, San Joaquin County
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The acts described above were undertaken and completed in
San Joaquin County on March 16, 2012

I declare under penalty of perjury under the laws of the State
of California that the foregoing is true and correct, and that this
declaration was executed at Stockton, California.



Angela N. Yess