S253783

No Stay; Response Tolled CCP §418.10
Master Cal. UD - Jury Trial Demanded; Not Yet Set

IN THE SUPREME COURT OF CALIFORNIA

Edward Stancil,[1]
Defendant/Petitioner,

v.

Superior Court of California, County of San Mateo,
Respondent;

City of Redwood City,
Real Party in Interest.

Review of Decision by the Court of Appeal - 1st Appellate District, Division Two
#A156100; Super. Ct. Case #18UDL00903

PETITIONER'S OPPOSITION TO REAL PARTY'S MOTION FOR JUDICIAL NOTICE ("RJN")

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[1] *Stancil v. Super. Ct. (Redwood City)* S253783 is lead case of 11 related UDs pertaining to Docktown Marina on Redwood Creek in Redwood City. The other ten have also been granted review and been deferred pending resolution of this lead case. The others are (all "*v. Super. Ct. (Redwood City)*: *Behrend* S253757; *Chambers* S253762/255764; *Diaz* S253769; *Fleming* S253766/S255781; *Groce* S253767; *Madden* S253771; *Peschcke-Koedt* S253770; *Reid* S253774; *Humphries* S253778; *Slanker* S253781 (*Chambers & Fleming* re-filings also granted (second S # the re-filed Supreme Court Case #, granted)).

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I. Introduction

This is Petitioner's Opposition to Motion filed by Real Party in Interest Redwood City ("**Real Party**") for Judicial Notice ("**RJN**", "**RJN Motion**", and "**Opposition**" herein). This Opposition addresses the fallacies in Real Party's RJN Motion. For clarity, Petitioner also filed an Application/Motion to Strike Real Party's RJN Motion ("**MTS**" and "**MTS Real Party's RJN Motion**" herein).

The following have been filed to date:

1. Real Party's RJN Motion;
2. Petitioner's MTS Real Party's RJN Motion;
3. Real Party's Opposition to Petitioner's MTS Real Party's RJN Motion.

All of the above are not governed by specific time frames applicable to the Petition for Review, granted for this S253783 Lead Case, *Stancil v. Superior Court (Redwood City)*. Real Party did not have to move for RJN of the City Charter and a Reply brief in an administrative writ action at all; it chose to do so, but no time frames applied.

Petitioner could have opposed Real Party's RJN Motion initially, and also, per the clerk of Court and a review of the CRC, there is no specific time frame for Opposition. In lieu of initially filing an Opposition, Petitioner filed his MTS Real Party's RJN Motion.

Petitioner now files this Opposition to Real Party's RJN Motion, out of caution to ensure that the Motion is not viewed as having been unopposed by not filing a direct Opposition, and having filed solely the MTS Real Party's RJN. All of the same points and authorities in the MTS Real Party's RJN Motion apply directly in opposition, and are included in this Opposition in this Section I. Introduction and Section II. Opposition / Argument.

Contemporaneous to filing this Opposition, the following two documents have also been submitted:

4. This Opposition of Petitioner to Real Party's RJN Motion; and

5. An Application to file a ***Reply*** to Real Party's Opposition to Petitioner's MTS Real Party's RJN Motion (a Reply not being automatically provided for, and subject to Application for Leave to so file.

The two (2) items that Real Party seeks to have this Court grant Judicial Notice of are entirely irrelevant to the issue before the Court, which is:

> "***Whether a motion to quash service of summons is the proper remedy to test whether a complaint states a cause of action for unlawful detainer.***"

The City Charter ("**Charter**") and a Reply Brief filed in an Administrative Writ Action[2] ("**Madden Reply**") (Ex A and B to Real Party's RJN, respectively) are entirely inapposite in this Petition for Review inquiring into whether Motion to Quash ("**MTQ**") is the proper remedy (or avenue, or process) to challenge a faulty UD Complaint.

Sections III., IV. and V. herein are the same content as Petitioner's proposed Reply and are proper arguments in this Opposition as being more thorough analytically. They could be viewed as a Sur-Reply if Real Party moves for leave to file Reply to this Opposition. But they are germane and apply in their own right in any event herein.

II. Opposition / Argument

A Party may oppose RJN based on irrelevance. *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418 (judicial decision in another proceeding denied because "ruling

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[2] San Mateo Co. Super. Ct. Case #17CIV04680 - collective administrative writ of Petitioners alleging insufficiency of Docktown Plan for denial of due process ("**Administrative Writ Action**" (the Hon. Marie S. Weiner, Dept. 2).

of another court on a related matter [not] relevant to or helpful toward this task...."); *see also Schifando v. City of Los Angeles* (2003) 31 Cal. 4th 1074, 1089 & n.4 (Supreme Court did "not find the materials particularly supportive of respondent's cause or relevant to the action, and therefore den[ied] the request.

Likewise, a Reply Brief in an Admin Writ Action is neither relevant nor helpful here. Indeed, it is distracting, entirely irrelevant and potentially even questionable. It is irrelevant because Affirmative Defenses have not even been interposed, there is no Answer. The Reply for which RJN was sought must be stricken.

In addition, proffered material must be capable of "immediate and accurate determination by resort to sources of reasonably indisputable accuracy...." *Duronsletv v. Kamps* (2012) 203 Cal.App.4th 717, 737. Petitioner would love a court to only read the Charter, and decide in its favor, because it clearly reads in UD Defendants' favor.

With all of the "exclusive", "control", "sole" and the like, it is in Petitioner's favor. However, it is also obvious that the entire course of conduct from 2014 through the present is based on Council's reckless course of conduct steamrolling the Docktown Plan despite all actions relying in some facet on lack of capacity to have acted at all. Port counsel so advised the Council. But this is all for another day, and is hotly disputed, it is not for an appellate court to determine and divine by RJN, it is for a jury or bench trial.

In the meantime, any Party may argue *pro* or *contra* to assertions shown in the materials sought to be judicially noticed, until the Court rules contrary. *See, e.g.*, 1DCA

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Local Rules ("L.R.") 9(b) (2006), Tent. New L.R. 6(b) (2019).[3]

Redwood City "City Charter" ("Charter")

First, the Charter is offered by Real Party, ostensibly to give background to the Petitions for Review filed by Petitioners. But Petitioners filed their statutory Writ Petitions in the Appellate Division of the Superior Court, in the 1DCA and in the Supreme Court "*all*" based on the issue of failure of Real Party to have complied with heightened statutory venue-pleading provisions applicable to Unlawful Detainer. The jurisdiction issue is irrelevant. Hence, the Charter is irrelevant and should be stricken.

The heightened statutory venue-pleading requirements require dismissal of a faulty UD Complaint, not amendment and re-service, on either Defendant or counsel. *See* CCP §396a(a); *see also* §CCP 392(b).

Real Party is not master of Petitioner's Writs and Petition. The "jurisdiction" issue

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[3] Analogizing to 1DCA Local Rule 9(b) ("Judicial Notice Requests"), any Party may rely on matters on which an RJN is sought, until the court rules contrary: (to be revised and re-numbered to L.R. 6 ("Requests for Judicial Notice") in the new Tentative 1DCA L.R. eff. Summer 2019.

9(a) [Form of Request] Any request that the court take judicial notice under Evidence Code section 459 shall be submitted as provided in the California Rules of Court. A motion seeking judicial notice pursuant to Evidence Code section 452 must include a showing of the relevance of the information to be judicially noticed.; **9(b) [If the Court Defers Ruling]** If the motion is filed at the same time as the moving party's brief or if the court, with or without notifying the parties, has deferred ruling on a judicial notice motion, any party may in its brief rely upon the items the moving party sought to have noticed. However, if the court denies the motion it will disregard any such matter or materials not judicially noticed. *(eff.. Oct. 16, 2006.)*

New Tentative L.R. 6: Requests for Judicial Notice **6(a)** [Form of Request] Requests for judicial notice must comply with California Rules of Court, rule 8.252.; **6(b)** [Deferral of Ruling] If a request for judicial notice is filed at the same time as the moving party's brief, or if the court has deferred ruling on a request for judicial notice, the parties may rely on the item sought to be judicially noticed in their briefs. If the court subsequently denies the request, however, it will not consider any such item in rendering its decision. (*eff. Summer 2019* date certain tbd).

raised by the Charter is an affirmative defense that goes to the right of possession. Petitioner is at the MTQ stage, and yet has Motions to Strike ("**MTS**") and Demurrer available. Affirmative Defenses are to be pleaded in an Answer.

The Affirmative Defense of right to possession (more specifically, that UD Plaintiff's UD must fail because it cannot establish the element of right to possession, hence lack of Council to right of possession), has not yet been raised, nor is it at issue.

Jurisdiction 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. Although "capacity" to delegate to an "agent" was briefly raised to preserve the issue in the MTQ, at the Superior Court Law & Motion level, it was never raised to the Appellate Division, to the 1DCA nor to this Supreme Court. Failure to have pleaded *any* of the statutorily-heightened venue requirements set forth above is the fatal, facial deficiency and defect of the UD Complaint that Petitioner has solely and squarely raised in the Writ Petition process.

Moreover, the Charter shows overwhelmingly in any event that the Port is organized to "insure" "comprehensive" and "adequate" development through "continuity" (and not scattershot) "control, management and operation". *See* Sec. 47 (highlighted by Real Party). Also highlighted by Real Party is that the "*exclusive* control and management" of the Port Area is delegated to the Port Board. Sec 47a (emphasis added). The Charter also makes it clear that the Port Board adopts resolutions and Ordinances *for and as* the City of Redwood City. Sec. 47d. And Section 47f gives the Port Board "complete and exclusive power" (for and on behalf of Redwood City) "to sue

and defend all actions and proceedings [in its jurisdiction]" and "to take charge of, control and supervise the Port [including all waterfront properties, and land adjacent thereto, or under water, structures thereon, and approaches thereto ... which are now or may hereafter be owned or possessed by the Redwood City]. Secs. 47f(1), (3) (among many other exclusive powers in 47f (1)-(18)). Finally, the City Manager, Mayor and Council Members are "only" allowed to speak to the Port in public comments. Sec. 47g.

How in the world Real Party believes this bolsters its position is beyond Petitioner, but in any event it's entirely all irrelevant at this MTQ pleading stage and should be stricken.

Administrative Writ Action – Reply Brief

The same holds true for the "Reply Brief" of Alison Madden in 17CIV04680 (San Mateo Co. Super. Ct. Dept 2, the Hon. Marie S. Weiner, presiding) ("**Reply**").

The Reply was filed by Ms. Madden, acting *in pro per* for herself in the Administrative Writ Action (also "**Admin Writ Action**" herein), which Admin Writ Action challenges as insufficient the "appeals process" of the Docktown Plan as being in violation of (at a minimum) procedural due process rights.

Ms. Karen Frostrom of the San Diego law firm Thorsnes, Bartolotta & McGuire LLP ("**TBM**") represents the other Petitioners therein (essentially the same Petitioners as the UD Defendants), under CRAL (the Cal. Relocation Assistance Act, or Law, Cal. Gov. Code §§7260 *et seq.*). Ms. Madden supports (and hired, and is a client of) Ms. Frostrom and TBM, and Ms. Madden is in pro per in the Admin Writ Action solely because Real Party (therein Respondent) is once again wrongly and irresponsibly trying to make every

action all about Ms. Madden's CCP §526a taxpayer representative action (the "**526a Action**") challenging the Council's entire course of conduct as being without jurisdiction and capacity under the Charter. In any event, it is ENTIRELY inapposite to this Petition for Review, and was never discussed nor raised in any of the proceedings below. Once again, jurisdiction and capacity were briefly mentioned in one section of the MTQ, but this issue as a basis for MTQ was abandoned on the Appellate Division statutory Writ Petitions, the Writ Petitions to the 1DCA and is nowhere mentioned therein, nor in the Petition for Review to this Supreme Court.

III.
No Suprising Change of Position; Real Party May Not Dictate Petitioner's Writ; He is Master of his Writ and Raised Solely Heightened Venue as the Fatal, Facial Defect by Writ taken after denial of *DELTA* MTQ

This Section is responsive to arguments in Real Party's Opposition to Petitioner's MTS Real Party's RJN Motion. These points are elaborative of the same issues raised by Real Party's Motion for RJN, but offered also in Petitioner's Reply to Real Party's Opposition to Petitioner's MTS Real Party's RJN Motion. They could be viewed as proposed sur-rebuttal if Real Party is permitted to file a Reply to this Opposition, but they are also germane in their own right as more thoroughly analytical of the same point above. It is important the issue be fully briefed, as set forth in the Application to file Reply noted in Section I., #s 4 & 5 above (proposed #4 Reply & #5 Application therefor).

Real Party's first assertion in its Opposition at page 2, is that the items it seeks to RJN—the City Charter and a reply brief in an administrative writ action—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."

Real Party, at *id.*, also claims Petitioner is "now contend[ing]" that the Charter is irrelevant on this Review, and calls this "contention" "curious" and a "surprising change of position". Real Party should not be surprised, however, as the issue of jurisdiction has not been raised at all in the statutory Writ process after MTQ.

Neither the Appellate Division, nor the 1DCA, nor this Court, has had the issue of capacity or jurisdiction raised, nor briefed. The Charter and admin writ Reply were not "RJN'd" at the Appellate Division nor 1DCA, nor in any way considered in the Writ process. Unfortunately for Real Party, it is Petitioner's prerogative, as master of his Writ, to have taken the Writ on the venue issue pursuant to CCP §418.10(c). To have taken a Writ on capacity and jurisdiction would have been a far longer and more involved process.

Indeed, if jurisdiction and capacity had been raised, there would have been many more items judicially noticed or introduced through declarations, as having been obtained via public records requests, including multiple ordinances (of each Council and Port), resolutions (of each Council and Port), and the Port's Tariff 7 covering the Port Area and providing for the process for seeking permits. This issue was not taken through the so-called, or potential, "mini trial" using a MTQ. It cannot be raised and decided now based on the Charter and one brief, although they both favor us anyway.

Who has jurisdiction is a question of fact, ultimately for the jury here, as to the affirmative defense of lack of right to possession (the primary foundational element of a UD cause of action, that the plaintiff has a right to possession). Whether a Council and

City Manager can bring an action when a co-equal Port Department, and its Executive Officer (Port City Manager equivalent), have by Charter *exclusive* jurisdiction as to all matters in the Port Area, is a legal issue, likely to be raised on Demurrer or MTS, or other pre-trial motion, or as proven at trial as a blended issue of fact and law. It is quite simply not the basis on which this Writ was taken, nor adequately briefed. *See* cases cited in Section II., *supra*, on the jurisdiction issue, now the subject of A156288 (1DCA, Div. 2).

IV.[4]

No Reversion Either; Specificity of Issue on Grant is *Delta*, not Jurisdiction nor any Other Myriad Fatal Defect that Could Support a *Delta* Motion; Each Case Stands on its Own, the Issue in the Statutory Writs at "all" levels as solely Venue

Real Party advances as its second contention the unsupported proposition that:

> "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. ... While Petitioner presented this argument in the Superior Court ..., which the City successfully opposed...., it is not the issue for which review has been granted.

Oppo. at p. 3 (citations to briefs omitted).

There is no *reversion*. As noted in Section III. above, a review of the Superior Court's records shows that all the Appellate Division briefing was on the venue requirement. And as reflected in both Section III. above and this Section IV., it was Petitioner's prerogative to have taken its statutory Writ petitions solely on the statutory, mandatory heightened venue-pleading requirement, which applies to the *Complaint*, and

[4] The same advisement applies here as to Section II: The points are responsive to arguments in Real Party's Opposition to the MTS Real Party's RJN Motion. These points are elaborative and more analytical of the same issues raised by Real Party's Motion for RJN. They could be viewed as a proposed sur-rebuttal if Real Party is permitted to file Reply to this Opposition.

is a facial, fatal defect to have omitted, and supports dismissal. It requires no "mini trial".

Petitioner, in his MTS the RJN, recited this Court's "specificity of issue", to wit:

> "***Whether a motion to quash service of summons is the proper remedy to test whether a complaint states a cause of action for unlawful detainer.***"

This Court certainly did *not* specify *jurisdiction or capacity* as "the issue on which review [was] granted".[5]

Moreover, it bears noting here that Real Party seems to be advocating for a long mini-trial regarding jurisdiction and capacity, with the introduction of external evidence, contrary to arguments of potential Amicus California Apartment Association ("**CAA**"). *See* Amicus Application of CAA, and its Brief, at p.9, in which it bemoans the legitimate inquiry, in the *Danger Panda* case, into whether a minor is a "tenant" under a San Fran-

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[5] Whether this Court elects to address, reach, and discuss any other issue(s), is clearly within this Court's sole prerogative. But the "issue" is the *Delta* motion itself.

Indeed, Petitioner raised two other "Questions/Issues Presented"—

(1) the heightened statutory venue-pleading statute itself, as an issue of first impression, because the treatises discuss the requirement to plead location and branch (The Rutter Group, citation in Petition for Review), but there is not yet a published opinion on this nuanced, arcane point, solely the statute itself; and

(2) the important issue re: statutory writs, for which there are split decisions and no authoritative ruling—whether the legislature has already balanced harms in providing for a statutory Writ, such that having to additionally prove "irreparable harm" is null.

However, the Court did not enumerate these in its Grant, clearly its prerogative. Both are worthy as issues for review, but once again, it is entirely in this Court's authority to determine the specificity of issue(s) on which Review is Granted. Indeed, the Court notices state:

> ***NOTE: The statement of the issues is intended simply to inform the public and the press of the general subject matter of the case. The description set out above does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.***

Source: https://appellatecases.courtinfo.ca.gov (full citation: https://appellatecases.courtinfo.ca.gov/search/case/ mainCaseScreen.cfm?dist=0&doc_ id=2277219&doc_no=S253783&request_token= NiIwLSIkTkw6W1ApSyNNXE1IQDw0UDxTJiIuWzJTQCAgCg%3D%3D

This means that the Court can address, in the arguments, its decision and/or in its opinion or order, any matter that it deems it may do so by its own research and analysis. This Court may indeed reach issues related to, and collateral to, the issue for which Review *was* Granted, which again is specifically set forth above and in its Grant.

cisco Ordinance ("**S.F. Ordinance**") that supplements California's "Ellis Act", Cal. Gov. Code §12.75. *See Danger Panda, LLC v. Launiu* (2017) 10 Cal.App.5th 502.

The CAA ignores that in *Danger Panda*, the UD Defendant actually *won* the MTQ on a *Delta* basis and analysis, supporting the arguments in the instant Petition. In *Danger Panda*, it was UD *Plaintiff* that *appealed* the Superior Court's MTQ *Grant* (Quidachay, J.). Plaintiff landlord appealed to the San Francisco Superior Court's Appellate Division, which affirmed Judge Quidachay. It wasn't a UD Defendant Writ that caused delay; moreover although the same issue "could" have been raised on Demurrer, the court would have granted the Demurrer on the same basis as it granted MTQ, and UD landlord's appeal *still* would have taken three years. CAA asserts that "mini trials" are inherently unfair and that *Danger Panda* was "woefully dilatory" But it was: (a) an important, legitimate, substantive issue pertaining to the payment of relocation benefits under the S.F. Ordinance and, thereby, sufficient notice and procedure under the Ellis Act; and (b) Plaintiff landlord's *appeal* that would've followed *either* MTQ or Demurrer.

Judge Quidachay recognized the validity of *Delta* in granting the *Danger Panda* MTQ based on a defect in the UD process, based on the Complaint at first response stage. That defect was the alleged improper tender of relocation benefits pursuant to the S.F. Ordinance prior to commencing UD. The S.F. Superior Court Appellate Division unanimously agreed with Judge Quidachay that a minor *is* a tenant under the S.F. Ordinance. Although plaintiff landlord's appeal took three years, this was a necessary and legitimate legal question, and the 3 year appeal would have happened after Demurrer anyway.

Apparently, CAA argues that wrongly-displaced tenants should only hold an after-the-fact lawsuit seeking proper compensation, when this would undermine the protections of the S.F. Ordinance and Ellis Act, at the prioritization of landlord's rights under UD.

Although it is true that each of these acts has policies underpinning the statutory framework, the policies underlying the S.F. Ordinance and Ellis Act are arguably more compelling than a policy generally informing an overall preference for a summary proceeding where right to possession is clear and a UD Plaintiff landlord has diligently conformed to the UD statutory framework in all respects. This includes having met all payment, notice and pleading requirements. There is no basis for preferring a "summary possession to landlord" policy over other legitimate policies that also underly UD, such as actually giving a 3-day cure or quit notice (*Delta*), or adequate pre-eviction compensation (*Danger Panda*), among other pre-filing or pleading mandatory requirements (such as the mandatory, statutory, heightened-venue pleading requirement at issue here).

V.[6]
What Petitioner's Attorney, as a pro per Litigant in her own Administrative Writ, has Briefed in a Different Hearing Before a Superior Court Judge, is Simply Not Capable of RJN on this Grant of Review, and Real Party ignores the Next Sentence Following its Quote, which Obliterates its Point Anyway

The final issue that deserves some spotlight is Real Party's peculiar claim that a different party's pro per Reply brief in an administrative writ action can be used in this UD Statutory Writ Petition to "show that Petitioner's *attorney* believes the City may not evict anyone from Docktown Marina, no matter the circumstances.... ", which Real Party

[6] The same advisement applies here as to Sections III., IV. and V., and in fn. 4 above.

then calls a "plainly untenable position." Real Party Oppo. to MTS, at p.2 (italics added).

First, as a matter of fact, the Reply speaks for itself, when it says:

> Petitioners would have, and now *may*, simply direct themselves to the Port Department, which has unclean hands and is equitably estopped, having allowed detrimental reliance by Petitioners for so long. Petitioners have a right to be on Redwood Creek, just the same as Municipal Marina, Redwood Landing, and multiple other Redwood City marinas, through this equitable estoppel. *If the Port determines otherwise*, it is the Port that is responsible for relocation under CRAL.

Madden Reply, at p.6 (italics added).

This is the singular paragraph for which Real Party seeks RJN, and it argues, first, that it is relevant on this MTQ (it's not), and second, that it somehow shows that Petitioner (or his counsel) believes that *neither* the Port nor the Council (both, and each, are the "City") may evict anyone "no matter the circumstances".

But that's not what it says.

It says that the Port Department is the proper actor here. It also sets forth *an argument* that the Port has unclean hands, has enabled and allowed detrimental reliance, and should be estopped to evict remaining tenants. But it then clearly follows this phrasing of Petitioner's argument with "*If the Port determines otherwise, it is the Port that is responsible for relocation under CRAL.*

CRAL is the California Relocation Assistance Act, or Law ("CRAA" and, more frequently, "CRAL"), Cal. Gov. Code §§7260 *et seq*. What the paragraph quoted above means, is that Petitioner (and likely all 11 of them) shall seek to defeat this UD brought by Council and City Manager, through the affirmative defense of lack of a right to possession based on exclusive jurisdiction being in the Port Department. The Port is not involved in the UD. City Manager instituted it at the direction of Council.

Unfortunately, just like every act and action in this entire matter of Docktown Marina, from the Hannig lawsuit in 2014 through the present day, any and all acts by Council are void *ab initio* as being in violation of Charter. *See, e.g.*, fn. 1 in the Reply at issue, *citing Crowe v. Boyle* (1920) 184 Cal. 117, 120; *People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 941; and *San Diego Firefighters, Local 145 v. Board of Admin. of San Diego City Employees' Retirement Sys.* (2012) 206 Cal.App.4th 594, 608.

Actions in violation of Charter are void, not merely voidable. *Id.* Thus, Council never had the right to accept service of, handle, "defend", nor settle the Hannig Suit, nor adopt or enact a Docktown Plan, enforce an administrative proceeding, force leases on threat of eviction, and then evict tenants. All of this is activity in the Port's purview.

Accordingly, on prevailing in UD here, Petitioners shall apply for a permit to the Port under Tariff 7. If the Port declines, then due to its contribution to the detrimental reliance of Petitioners (and dozens of other homeowners for decades), it shall be responsible for CRAL relocation benefits. This is why Hannig brought the suit to Council, because the General Fund could be raided for well over $20 million now, when the Port Dept. budget would never have supported such a relocation payout; the result of the Hannig Suit would have been much different had he taken it legitimately to the Port.

In any event, none of this is relevant here, as demonstrated by Sections III. and IV., above. The mandatory, statutory heightened-venue pleading burden is the issue that has been taken on the statutory Writ process, and it is a facial, fatal defect not requiring a "mini trial". Real Party cannot dictate Petitioner's Writ. And it certainly can't claim that somehow this Court should dispose of a nuanced procedural issue because "Petitioner's

attorney" made an argument in a brief in an administrative writ proceeding in which she is a pro per "*party*", notwithstanding that she believes the arguments are solid.

What actions Petitioners and their attorney may potentially make or take in the future cannot be a basis for deciding whether a *Delta* motion is a proper procedure for testing whether a UD Complaint is sufficiently pleaded to support a 5-day Summons, and thereby personal jurisdiction in the UD Action.

First, addressing (literally, going before and in front of) the Port Board for a permit is in the future; what the Port then does regarding this matter, is also in the future. Yes, Petitioners may believe the Port has unclean hands and that "both" Port and Council have induced detrimental reliance for decades and should be estopped to evict Petitioners.

But we are not at trial yet.

If we do not prevail at the Port administrative level, or at trial, on detrimental reliance and estoppel, then it is the *Port* that must pay relocation benefits. We acknowledged--in the quote above--that "if" we lose, then the Port must pay relocation if it evicts. There is nothing inconsistent with this statement of belief, intent and future action and any other position taken in this statutory Writ proceeding and Petition.

Finally, counsel's reference as a *pro per* party in the Reply, that she believes she (and other Petitioners) "have a right" to be on Redwood Creek the same as other marinas, pertains to the right to have a permit and operating agreement, the same as the Port has granted to the following Redwood City marinas: "Blu" (the former Pete's); Bair Island (at the Villas); One Marina adjacent to Docktown; "Redwood Landing" at the fishing pier; "Municipal Marina" (the Redwood City Harbor and Marina); and Westpoint Marina

on Westpoint Slough. All of them have, have had, or plan to have liveaboards. It is in this context that Petitioner's counsel made a statement of "having a right" to be on Redwood Creek. Every other such referenced and mentioned marina above, and in the Reply, has a right to exist, and a right to have liveaboards.

VI.
CONCLUSION

In conclusion, Petitioner requests this Court grants its Application / Motion to Strike. Real Party's Opposition only contains a couple pages of the same recycled arguments it made in its RJN Motion. But none of the RJN Motion nor Opposition to Petitioner's MTS supports noticing either the Charter or the admin Reply.

For the reasons above, Petitioner respectfully requests that this Court deny Real Party's RJN Motion.

THORSNES BARTOLOTTA McGUIRE LLP
MADDEN LAW OFFICE

DocuSigned by:
Alison Madden
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Dated: June 4, 2019

By:_____ Alison M. Madden SBN 172846

Verification / Declaration: by my signature above I verify all facts stated herein as known to me personally and if called as a witness, would competently testify thereto.

S253783

No Stay; Response Tolled CCP §418.10
Master Cal. UD - Jury Trial Demanded; Not Yet Set

IN THE SUPREME COURT OF CALIFORNIA

Edward Stancil,[1]
Defendant/Petitioner,

v.

Superior Court of California, County of San Mateo,
Respondent;

City of Redwood City,
Real Party in Interest.

Review of Decision by the Court of Appeal - 1st Appellate District, Division Two
#A156100; Super. Ct. Case #18UDL00903

PROOF OF SERVICE - PETITIONER'S OPPOSITION TO REAL PARTY'S MOTION FOR JUDICIAL NOTICE ("RJN")

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[1] *Stancil v. Super. Ct. (Redwood City)* S253783 is lead case of 11 related UDs pertaining to Docktown Marina on Redwood Creek in Redwood City. The other ten have also been granted review and been deferred pending resolution of this lead case. The others are (all "*v. Super. Ct. (Redwood City)*: *Behrend* S253757; *Chambers* S253762/255764; *Diaz* S253769; *Fleming* S253766/S255781; *Groce* S253767; *Madden* S253771; *Peschcke-Koedt* S253770; *Reid* S253774; *Humphries* S253778; *Slanker* S253781 (*Chambers & Fleming* re-filings also granted (second S # the re-filed Supreme Court Case #, granted)).

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of San Mateo. I am over the age of 18 and not a party, my business address is PO Box 620650, Woodside, California, 94062.

On June 4, 2019, I served a copy on counsel below** of the following document(s):

PETITIONER'S OPPOSITION TO REAL PARTY'S MOTION FOR JUDICIAL NOTICE ("RJN"); THIS PROOF OF SERVICE

By placing a true copy enclosed in a sealed envelope w/U.S mail post prepaid, from Redwood City CA (which includes Emerald Hills/Woodside (unincorporated) post offices)**:

personal delivery 6/5/19

**Randall G. Block, for Real Party Redwood City
BURKE, WILLIAMS & SORENSEN, LLP
and for and on behalf of: Michelle Marchetta Kenyon, Kevin D. Siegel, Maxwell Blum (all Burke firm) and Veronica Ramirez (City Attorney-Redwood City)
1901 Harrison Street, Ste. 900
Oakland, CA 94612-350

The Hon. Susan L. Greenberg
San Mateo County Superior Court Courtroom 2B, Dept. 3
400 County Center
Redwood City, CA 94063

personal delivery 6/5/19

I declare under penalty of perjury that the following is true and correct, and executed on June 4, 2019.

THORSNES BARTOLOTTA McGUIRE LLP
MADDEN LAW OFFICE

DocuSigned by:
Alison Madden
1D528B08A16C473...

By:_____
Alison M. Madden SBN 172846

Dated: June 5, 2019