

Civ. No. S253783

SUPREME COURT
FILED

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IN THE SUPREME COURT OF CALIFORNIA

Jorge Navarrete Clerk

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

**ANSWER TO AMICUS CURIAE BRIEF OF WESTERN
CENTER ON LAW & POVERTY**

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INTRODUCTION

Western Center on Law & Poverty's ("Western Center") Amicus Brief (for which permission to file was granted on June 20, 2019) asserts that tenants will be prejudiced if the Court affirms the rule, set forth in *Borsuk v. Appellate Division of Superior Court* (2015) 242 Cal.App.4th 607, that an unlawful detainer defendant may not move to quash service of a summons and complaint on the ground that the complaint fails to allege facts sufficient to state a cause of action. While the City has great respect for Western Center and the work it performs, Western Center's concern is misplaced. Tenants will continue to have the right to contend that an unlawful detainer complaint fails to state a cause of action, including by demurrer that is filed contemporaneously with an appropriate motion to quash.

DISCUSSION

Western Center incorrectly asserts that confining the scope of motions to quash summons in unlawful detainer matters to the grounds set forth in the statute will adversely and improperly affect tenants' ability to defend against unlawful detainer complaints. Affirming *Borsuk* and disapproving *Delta Imports, Inc. v. Municipal Court* (1983) 146 Cal.App.3d 1033, would merely mean that tenants could continue to file a demurrer—rather than a motion to quash—in response to an unlawful detainer complaint they believe fails to state a cause of action. While the City acknowledges Western Center's concern about the need to protect tenants' access to and possession of affordable housing, that concern is not relevant to the limited issue before this Court—the procedural propriety of a motion to quash service of summons that is unauthorized by statute and in conflict with the law.

Western Center argues that “a special five-day summons is not properly served where a plaintiff has not clearly brought itself within the confines of an action for unlawful detainer” and, accordingly, that a motion to quash is thus proper to test whether a complaint pleads the requisite elements of an unlawful detainer complaint. (Western Center’s Amicus Br. at 9.) However, as the City previously explained in its return brief, this argument is incorrect. (Ret. Br. at 24-27.)

Motions to quash test whether the Court has personal jurisdiction over the defendant. The Code of Civil Procedure authorizes defendants to file a motion “to quash service of summons on the ground of *lack of jurisdiction of the court over him or her.*” (Code Civ. Proc. § 418.10(a)(1) [emphasis added].) In California, the prerequisites of personal jurisdiction include “(1) Jurisdiction of the state, based upon there being sufficient minimum contacts between this state and the parties or their property or other interests; (2) Notice and opportunity for hearing; and (3) Compliance with statutory jurisdictional requirements for service of process.” (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 263.) This Court has previously stated that the nature of the action has no bearing on the personal jurisdiction inquiry. (*Greener v. Workers’ Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1034-35.) The Legislature has determined that five days’ notice is sufficient notice in an unlawful detainer action. (Code Civ. Proc. § 1167.) Accordingly, motions to quash unlawful detainer actions should be limited to raising the question of whether the Court has acquired personal jurisdiction over the defendant, as stated in the statute, not whether a complaint sufficiently pleads a cause of action for unlawful detainer.

Western Center also contends that the “short summons timeline leads many tenants to lose their opportunity to be heard.” (Western’s

Amicus Br. at 10.) The contention is a red herring. The deadline to file a motion to quash and a demurrer is the same five-day deadline. (See Code Civ. Proc. §§ 1167.3, 1167.4, 1169). Thus, abiding by the rules governing these respective motions will not affect the timeline by which tenants must respond to the complaint. If anything, tenants would have more time to prepare for a hearing on a demurrer, which is a regularly noticed motion, as opposed to a motion to quash, which is scheduled on three to seven days' notice. (See Code Civ. Proc. § 1167.4.)

Moreover, Code of Civil Procedure section 418.10(e) provides that filing a demurrer alongside a motion to quash does not mean that the defendant has waived his or her personal jurisdiction argument. Where a defendant wants to argue that there was an issue with the service of the summons and complaint, and would also like to challenge whether the underlying complaint states a cause of action for unlawful detainer, section 418.10(e) provides the opportunity for the defendant to respond by making both arguments, albeit in separate filings.


CONCLUSION

Affirming *Borsuk* and disapproving *Delta* would not eliminate any tenant rights. Instead, it would clarify for unlawful detainer litigants and the courts the delineation between arguments that may be advanced by motion to quash and by demurrer.

Dated: July 2, 2019

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that this Answer is produced using 13-point Times New Roman type and contains approximately 795 words. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: July 2, 2019

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**PROOF OF SERVICE RE: ANSWER TO AMICUS CURIAE BRIEF OF
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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 July 2, 2019, I served a copy of the within document(s):

**ANSWER TO AMICUS CURIAE BRIEF OF WESTERN CENTER ON LAW
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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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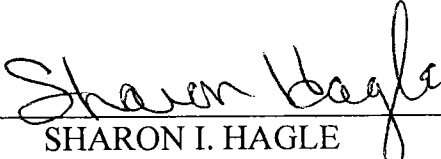
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~and~

The Hon. Susan L. Greenberg
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I declare under penalty of perjury that the following is true and correct, and executed on July 2, 2019.


SHARON I. HAGLE