Civ. No. S253783

IN THE SUPREME COURT OF CALIFORNIA

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

RETURN TO ORDER TO SHOW CAUSE; ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES

BURKE, WILLIAMS & SORENSEN, LLP
Michelle Marchetta Kenyon, Bar No. 127969
*Kevin D. Siegel, Bar No. 194787
Randall G. Block, Bar No. 121330
Maxwell Blum, Bar No. 299336
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501
Telephone: 510.273.8780
Facsimile: 510.839.9104
E-mail address: ksiegel@bwslaw.com

Attorneys for Plaintiff and Real Party in Interest
CITY OF REDWOOD CITY

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Other Authorities

TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Plaintiff and Real Party in Interest, the City of Redwood City (the "City"), respectfully submits this Return to this Court's Order to Show Cause regarding Defendant and Petitioner Edward Stancil's ("Petitioner" or "Stancil") petition for review of the First District Court of Appeal's denial of his petition for writ of mandamus which sought to reverse the Superior Court's denial of a motion to quash a summons in an unlawful detainer proceeding. Under the California Rules of Court, rule 8.487(b), the City responds with an Answer and Memorandum of Points and Authorities and requests that the Court deny the writ requested by Petitioner as set forth below.

I.
INTRODUCTION

Stancil urges this Court to adopt the holding of the Second District Court of Appeal, Division 7, in *Delta Imports, Inc. v. Municipal Court* (1983) 146 Cal.App.3d 1033—that an unlawful detainer defendant may challenge by motion to quash whether the complaint states facts sufficient to constitute a cause of action—which decision the Second District, Division 4, subsequently declined to follow, determined was "not supportable," and "disagreed with." (*Borsuk v. Appellate Division of Superior Court* (2015) 242 Cal.App.4th 607, 612, 616.) *Delta* was wrongly decided, and *Borsuk*—which thoroughly and convincingly criticized *Delta*—represents the correct rule.

Relying on inapplicable case law and setting forth now-discredited analysis, *Delta* held that a defendant may move to quash service of an unlawful detainer summons and complaint on the ground that the plaintiff failed to plead an essential element of the cause of action. (*Delta*, 146 Cal.App.3d at pp. 1035-36.) Although a few decisions have relied on *Delta*, none has since *Borsuk* revisited the propriety of challenging the substance of an unlawful detainer complaint by motion to quash, and unequivocally demonstrated that there is neither basis nor rationale for importing into a motion to quash a contention that a complaint fails sufficiently to plead facts to state a cause of action for unlawful detainer.

In *Borsuk*, the Court of Appeal thoroughly explained how *Delta*'s analysis and conclusions were incorrect. At bottom, motions to quash properly challenge exercise of the court's ***personal jurisdiction*** over the defendant, not whether the complaint sufficiently pleads all the elements of a cause of action. (*Borsuk*, 242 Cal.App.4th at pp. 612-13, 615.)

Here, Stancil moved to quash in reliance on *Delta*. (RR00015-16.[1]) Stancil argued that service of the City's summons and complaint for unlawful detainer should be quashed because the City did not state a cause of action. (*Ibid.*) The City opposed the motion on multiple grounds, including that *Borsuk* controlled and precluded Stancil's effort to use a motion to quash to challenge whether the City pleaded a cause of action for unlawful detainer. (RR00048-50.) The City also responded that Stancil had failed to provide any factual support for his allegations, and that he was presenting an argument that is impermissible in unlawful detainer actions because the defense he advanced, even if correct, did not provide a basis for him to continue to possess the property. (*Id.* at RR00048-49.)

The Superior Court denied Stancil's motion, agreeing that a motion to quash was the wrong procedural mechanism for Stancil's contention. (RR00350-353.) Stancil then petitioned the Superior Court Appellate Department for a writ of mandate and prohibition reversing the trial court's decision. (RR00356-382.) The Appellate Department denied the petition. (RR00409-10.) Stancil then filed a Petition for Writ of Mandate, Prohibition or Other Appropriate Relief in the First District Court of Appeal. (RR00413-431.) The First District denied Stancil's improper and meritless petition.[2] (RR00465.)

These decisions of the trial and appellate courts were correct. This Court should uphold the lower courts' decisions and clarify that *Borsuk* correctly rejected *Delta*, and confirm that *Delta* is no longer good law. This clarification will (1) ensure that tenants retain their rights to challenge

---

[1] RR refers to Real Party's Record—the Appendix of Exhibits submitted herewith.

[2] The petition was improper because Stancil did not seek to request his case to be transferred to the Court of Appeal. (See Rules of Court, rule 8.1006(a); RR00460-461.)

summons and complaints in unlawful detainer actions, by proper procedures as is required of all other litigants, and (2) preserve the Legislature's creation of an expedited schedule for resolution of unlawful detainer proceedings and avoid delays based on a tenant's unwarranted use of a motion to quash to present a contention that must be otherwise presented, e.g., demurrer or motion to strike.

II.
CITY'S RETURN BY ANSWER TO PETITION FOR REVIEW

Plaintiff and Real Party-in-Interest City of Redwood City ("City") hereby answers the "Petition for Review or, in the Alternative, Grant and Transfer Back", filed by Defendant and Petitioner Edward Stancil ("Petitioner" or "Stancil"), as follows.[3] All allegations not expressly admitted are denied. Petitioner's paragraphs are unnumbered so the City has sought to identify them by page number and section title.

Page 6 – "Timeliness". Denied.

Page 7 – "Grounds for Review". Denied. The petition is improper because Stancil failed to apply for a transfer from the superior court appellate department to the court of appeal. (See Rules of Court, rule 8.1006(a).) The First District Court of Appeal decision denying the writ petition does not state its reason for denying the petition. It is possible it simply denied the writ petition because of this procedural failure. This defect is not curable as the deadline to seek transfer has already passed. (Rules of Court, rule 8.1006(b)(1).)

Page 8 – "Introduction". Denied. The cases do not all have the same procedural history, and may involve distinct legal issues once litigated. Petitioner attempts to advance an "affirmative defense" that is improper in an unlawful detainer action because it does not go to the issue

[3] The City's Answer is deemed verified under Code of Civil Procedure ("CCP") section 446.

of his right to possess the property at issue, as explained in more detail below. The defense is unsupported by the facts.

Pages 9-12 – "The Superior Court – Procedure and Orders". Denied. The Superior Court decision speaks for itself. *Borsuk* disagreed with and rejected *Delta*, a prior decision of the same Court of Appeal (the Second District Court of Appeal), thereby establishing that *Delta* is not good law.

Page 11 – "The Superior Court Appellate Division – Procedure and Orders". Denied. While it is correct that the City addressed some non-substantive issues with the notices of entry of order following the hearing on the defendants' motions to quash in the *Chambers* and *Fleming* cases, the characterization that the City "late-served" any defendant is incorrect.

Page 12 – "The First District Court of Appeals [sic] Procedure and Orders". Denied. The writ petitions were not timely or properly taken to the Court of Appeal, including because the defendants/petitioners missed the step of seeking leave for transfer. (See Rules of Court, rule 8.1006.)

Page 12-13 – "Related Actions". Denied. The City has responded to several baseless lawsuits in the Superior Court. The California Environmental Quality Act ("CEQA") action is now final and judgment was issued in favor of the City. (San Mateo County Superior Court Case No. 17CIV00276). The City also obtained a judgment in its favor in Case No. 17CIV00316 in the San Mateo County Superior Court. That decision has been appealed (and was subject to a baseless petition for review filed and denied on April 26, 2019). Class certification was denied in San Mateo County Superior Court Case No. 17CIV05387. Litigation continues in the actions identified by Stancil. Neither Stancil nor any of the other defendants/petitioners has a "full affirmative defense going to the right of possession." The unlawful detainer actions the City has filed are not "wrongful."

DEFENSES

1. The petition does not state a cause of action.

PRAYER

1. The City respectfully requests that the Court deny the "Petition for Review or, in the Alternative, Grant and Transfer Back".

2. The City be awarded costs of suit and any other relief that the Court deems proper.

III.
STATEMENT OF FACTS AND PROCEDURAL HISTORY; SUMMARY OF PREVAILING LAW (*BORSUK*)

A. The City Filed an Unlawful Detainer Action After Stancil Did Not Comply with a 60-Day Notice to Quit.

In July 2013, the City and Edward Stancil entered into a Live Aboard Rental Agreement ("Rental Agreement") for Stancil's possession of a berth at a City marina, commonly known as "Docktown." (RR00320-00330.) On July 11, 2018, the City served Stancil with a 60-day notice to quit, which the City had the absolute right to do under the Rental Agreement. (RR00337-00339.) Stancil did not surrender possession. Accordingly, on September 21, 2018, the City filed this unlawful detainer action. (RR00315-318.)

The City served notices to quit on other "liveaboard" residents of Docktown at approximately the same time last year (but not on non-residential tenants or licensees, who continue to have the right to berth boats at Docktown for non-residential uses, e.g., recreational uses). (See e.g., RR00080-82.) The City terminated residential tenancies at Docktown in furtherance of the City's process of bringing the use of the marina into compliance with the statutes granting these tidelands to the City ("Granting Statutes") as well as the Public Trust Doctrine, each of which allows for recreational and other non-residential uses. (See, e.g., RR00315-16, ¶¶ 1-

4.) The City Council had adopted the Docktown Plan in December 2016, under which the City provided relocation assistance to residential tenants, both money and services, to facilitate their moving out of Docktown (even though the City was entitled to terminate the month-to-month tenancies and had no obligation under state or federal law to provide such assistance). (RR00316-17, ¶¶ 4-5.)

B. Stancil and Other Docktown Tenants Filed Motions to Quash.

Stancil and other tenants represented by Docktown resident and attorney Alison Madden (collectively, "Stancil et al.") have used successive procedural gambits to delay the proceedings. Initially, many of them, including Stancil, sought to avoid service of the summonses and complaints by refusing to answer the door for the City's process server, forcing the City to apply for leave to serve the defendants by posting and mailing. (See RR00342-347.)

Stancil et al. then filed motions to quash that purport to rely on *Delta* (despite the *Borsuk*'s evisceration of *Delta*, as well as dramatically different facts at issue here). (RR00008-16; RR00030-38; RR00045-50; RR00170-175; RR00295-298; RR00303-306; RR00350-353.) Stancil et al. argued that the City's complaints failed to state a cause of action for unlawful detainer.[4] (RR00008-16.) However, Stancil et al. did not assert that the complaints failed to allege any of the requisite elements of an unlawful detainer action. (RR00016.) Rather, Stancil et al. asserted that the City

[4] Stancil et al. also argued that the City's complaints were procedurally defective because they did not name which branch of the Superior Court the action would be heard in, and that venue was improper in San Mateo County. (RR00015.) Contrary to Stancil's claims, the summons provided the exact address of the Court where the action would be heard, and venue was proper as Docktown is located in San Mateo County. (RR00313.) The Superior Court rejected Stancil's contentions, and the Supreme Court did not request briefing on them. (RR00351; RR00468.)

allegedly lacks capacity to terminate rental agreements at Docktown, based on their contention that only the City's Port Department may exercise control and jurisdiction over Docktown—even though (1) each tenant signed an agreement with the City for live-aboard use of a Docktown slip, (2) the City holds title to Docktown pursuant to the Granting Statutes, and (3) it was the City Council that directed City staff to terminate residential use and provide relocation assistance under the Docktown Plan. (RR00315-316, ¶¶ 1-4; RR00320-330.)[5]

C. The Trial Court Rejected the Motions to Quash, and the Appellate Courts Denied Writ Petitions.

The Superior Court denied the motions to quash.[6] (RR00350-353.) The Court rejected the argument that the City's complaints failed to state a

---

[5] This contention is a component of a larger strategy by Alison Madden to contend that no City representative—whether acting at the behest of the City Council, the City's Board of Port Commissioners, or any other City actor—could evict Docktown residents.

Underlying Madden's effort is her misleading, inaccurate contention that City's Port Department is a separate legal entity. The Port Department which is governed by the City's Board of Port Commissioners, is an arm of the City. (MJN, Exh. A [City Charter, § 47f].) Thus, while the parties sometimes refer to City's Port Department and/or Board of Port Commissioners as "the Port," that shorthand is merely a matter of convenience and does not connote separate legal status.

As to her larger strategy to prevent any City actor from terminating residential use at Docktown, although she alleges that the Port Department has the exclusive right to exercise control over Docktown, Madden asserts that the Port also may not terminate residential use because it "has unclean hands and is equitably estopped, having allowed detrimental reliance by Petitioners for so long," and that "Petitioners have a right to be on Redwood Creek." (See MJN, Exh. B, p. 6.)

[6] The initial motions to quash were filed on behalf of defendants Chambers and Fleming. The Superior Court denied the motions. (See RR00355, ¶ 3.) The parties subsequently agreed that each Docktown defendant represented by Madden had advanced the same motion to quash, and that the City opposed the motions on the same grounds. (*Ibid.*; see also

cause of action for unlawful detainer based on Stancil et al.'s contention the City does not have any right to exercise control and jurisdiction over Docktown (but that the City's Port Department does). (*Ibid.*) The Court relied on *Borsuk*, ruling that a motion to quash is not an available procedure to challenge an unlawful detainer complaint that is valid on its face. (*Ibid.*)

Since this is a limited civil matter, Stancil et al. filed writ petitions to the Superior Court's Appellate Department, which were denied. (RR00409-10.) Instead of seeking transfers to the Court of Appeal, as required by the California Rules of Court, rule 8.1006(a),[7] Stancil et al. petitioned directly to the Court of Appeal, unsuccessfully. (RR00413.)

Stancil et al. subsequently petitioned this Court for review. The Court granted the petitions, issued its order to show cause in this case, and deferred briefing in the other cases.

D. *Borsuk* Is the Prevailing Law on Motions to Quash.

This Court has requested briefing on the subject of two cases decided by the Second District Court of Appeal, *Delta* and *Borsuk*.

1. *Delta* Permitted Unlawful Detainer Defendants to Challenge the Sufficiency of a Complaint by Motion to Quash, Which *Borsuk* Later Rejected.

In *Delta*, decided in 1983, the Second District, Division 7, upheld the use of a motion to quash to challenge on substantive grounds whether a complaint stated a cause of action for unlawful detainer, based on a defective notice to quit. The plaintiff failed to allege that it served a proper notice to quit (an essential element of an unlawful detainer complaint). The

---

RR00350-353.) The trial court issued the same decision denying each motion.

[7] Rule 8.1006(a) of the Rules of Court states: "A party may file a petition in the Court of Appeal asking for an appellate division case to be transferred to that court ***only if an application for certification for transfer was first filed in the appellate division and denied.***" (Emphasis added.)

court determined that service of the summons and complaint should be quashed because the facts alleged did not support the use of a five-day summons. *Delta*'s premise is that if the complaint fails to state a cause of action for unlawful detainer, the summons that is served with the complaint is defective because it calls for the plaintiff to respond in five days, when 30 days should have been given. (*Delta*, 146 Cal.App.3d at p. 1035.) The exercise of jurisdiction is therefore improper because no valid summons has been served. (*Ibid.*)

In support of its decision, *Delta* cited *Greene v. Municipal Court* (1975) 51 Cal.App.3d 446, 451-52, and *Castle Park No. 5. v. Katherine* (1979) 91 Cal.App.3d Supp. 6, 8 fn. 1. *Delta*'s reliance on these decisions was misplaced. *Greene* did not involve a proper unlawful detainer case at all; *Castle Park* reached a much narrower claim about unlawful detainer damages claims without any analysis. Neither supported *Delta*'s broad holding.

In *Greene*, the court held it is improper to try to enforce the rights and obligations of a seller and buyer in a conditional sale of real property by filing an unlawful detainer claim. (*Greene*, 51 Cal.App.3d at pp. 450-51.) While the complaint might have pled other cognizable claims, the use of a five-day summons did not "confer jurisdiction over a party" because the complaint did not actually sound in unlawful detainer. (*Id.* at pp. 451-52.)

Castle Park held that a landlord who terminates a month-to-month tenancy may not recover rent for the period before termination in an unlawful detainer proceeding. (*Castle Park*, 91 Cal.App.3d Supp. at p. 9.) The Court explained that "when a complaint seeks relief beyond that authorized under the unlawful detainer statutes, the five-day summons is improper." (*Id.* at p. 9, fn. 1.) Because the complaint sought unauthorized relief, the superior court's appellate department affirmed the trial court's

order quashing service of an unlawful detainer summons and complaint. (*Id.* at p. 9.) The Court did not consider whether a motion to quash was the correct way to attack the complaint, but instead "simply affirmed an order quashing service of the summons in one action and affirmed a judgment which followed the granting of a motion to strike the allegations of pre-termination rent in the other." (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 516.)

While other appellate departments have issued decisions that followed *Delta*, these decisions were all issued prior to the Second District's decision in *Borsuk*, which disagreed with *Delta* and rejected its analysis as unsupported. (*See Parsons v. Superior Court* (Sup. Ct. App. Div., Marin County 2007) 149 Cal.App.4th Supp. 1; *Carr v. Superior Court* (Sup. Ct. App. Div., Riverside County 2011); *Garber v. Levit* (2006) 141 Cal.App.4th Supp. 1, 6.)[8] Until now, this Court declined to address the merits of *Delta*. (See *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1036, fn. 5.)

2. *Borsuk* Disagreed With *Delta* and Clarified that It Was Limited to Its Narrow Facts.

In *Borsuk*, decided in 2015, the Second District, Division 4, held that "***a motion to quash service of summons is not the proper remedy to test whether a complaint states a cause of action for unlawful detainer or service of a notice to pay or quit.***" (*Borsuk*, 242 Cal.App.4th at p. 617 [emphasis added].)

> The requirement that the landlord comply with sections 1161 and 1162 by serving the three-day notice [to pay or quit] on the tenant is undisputed. [Citation.] The question is whether the tenant may challenge the landlord's alleged

[8] None of these decisions evaluated whether *Delta* was correctly decided.

> failure to comply with this requirement by moving to quash service of summons under section 418.10. ***We conclude that the tenant may not, and in doing so we disagree with the leading case on the point, Delta,*** 146 Cal.App.3d 1033.

(*Id.* at p. 611 [emphasis added].) With its holding in *Borsuk*, the Second District explained that its earlier decision in *Delta* was contrary to law and wrongly decided. The Second District identified at least five errors in *Delta*.

First, the *Borsuk* Court explained that *Delta* incorrectly assumed that a court obtains personal jurisdiction over the tenant through the landlord's service of a three-day notice to pay or quit. The notice to quit, which terminates the tenancy, is not the basis for personal jurisdiction. *Borsuk* made clear that personal jurisdiction is conferred by service of the unlawful detainer summons and complaint. (*See Engebretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 443.) As compared to service of summons and complaint, by which the court acquires personal jurisdiction, service of the notice terminating the tenancy is an element of an unlawful detainer cause of action that must be alleged and proven for the landlord to recover possession. Those courts and treatises that have, in the wake of *Delta,* described service of the three-day notice as jurisdictional are incorrect.

Second, *Borsuk* explained that *Delta* ignored the ***limitations*** of a motion to quash. CCP section 418.10 provides that a defendant may file a motion "[t]o quash service of summons ***on the ground of lack of jurisdiction*** of the court over him or her." (CCP § 418.10(a)(1) [italics added].) *Borsuk* thus states "on a motion to quash, the issue before the trial court and on review is 'strictly limited to the question of ***jurisdiction over the defendant.***' ... [A] motion to quash, like most pretrial motions made in civil cases, does not involve a determination of facts related to the merits of

the case." (242 Cal.App.4th at p. 613 [citing *School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1132-33]; see also *Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351, 1360 ["'Determination of the *merits* of the complaint [is] not within the scope of the issues raised by the motion. [Fn.]' [Citation.]"].) "Thus ***a motion to quash does not serve the function of a demurrer as to whether the complaint states a cause of action***." (*Kroopf*, 183 Cal.App.3d at p. 1360.) By authorizing a motion to quash to challenge the allegations in an unlawful detainer complaint, *Delta* improperly expanded the scope of a motion to quash beyond its purpose.

In this regard, *Borsuk* noted that "[a] motion to quash is frequently decided on factual evidence." (*Borsuk*, 242 Cal.App.4th at p. 614, fn. 4 [citing Moskovitz et al., Cal. Landlord-Tenant Practice (Cont.Ed.Bar 2d ed. 2015) § 10.12, and Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 3:387 ["Jurisdictional facts must be proved by competent evidence at the hearing on the motion to quash"]].) The use of a motion to quash to challenge the validity of the three-day notice therefore may lead to evidentiary hearings and mini-trials before the case is adjudicated, undermining the summary nature of the unlawful detainer proceeding. (*See Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village* (2010) 185 Cal.App.4th 744, 749 [describing unlawful detainer as a "summary proceeding to determine the right to possession of real property"].)

Third, *Borsuk* noted that the cases on which *Delta* relied—*Greene v. Municipal Court* (1975) 51 Cal.App.3d 446, and *Castle Park No. 5 v. Katherine* (1979) 91 Cal.App.3d Supp. 6—do not support *Delta's* assertion that a motion to quash is the proper method to challenge either the validity of an unlawful detainer complaint or service of the underlying notice to quit. In *Greene,* the complaint established a relationship between the plaintiff and the defendants of "seller and buyer in a conditional sale of real

property," not of lessor and lessee. (*Greene*, 51 Cal.App.3d at p. 450.) Because the complaint did not "allege a situation to which the remedy of unlawful detainer applies," it did not state a cause of action within the subject matter jurisdiction of the municipal court. (*Ibid.*) The Court thus concluded that the five-day unlawful detainer summons was invalid and reversed the judgment of the Municipal Court. (*Id.* at p. 448.) *Greene* did not examine the merits of the underlying complaint in determining that the municipal court lacked jurisdiction. Thus, it does not stand for the proposition that a motion to quash is the proper method to challenge the merits of the complaint. Nor does *Greene* support the notion that the service of the notice terminating the tenancy may be challenged in a motion to quash.

In *Castle Park,* the issue was "whether a landlord who terminates a month-to-month tenancy may recover rent for the period prior to the termination in an unlawful detainer proceeding." (*Castle Park*, 91 Cal.App.3d Supp. at p. 9.) *Castle Park* cited *Greene* for the proposition that "[w]hen a complaint seeks relief beyond that authorized under the unlawful detainer statutes, the five-day summons is improper. [Citation.]" (*Id.* at p. 8, fn. 1.) Thus, *Castle Park* is not authority for the proposition that a motion to quash may be used to challenge service of a notice to pay rent or quit.

Fourth, *Borsuk* stated that *Delta's* analysis simply "does not withstand scrutiny." (*Borsuk*, 242 Cal.App.4th at p. 615.) In *Delta,* the unlawful detainer complaint failed to allege service of a notice to pay rent or quit. As such, *Delta* rejected the notion that a tenant should demur to the complaint rather than move to quash service: "A general demurrer only tests whether the complaint states a cause of action for ***something*** even if it is on a theory other than unlawful detainer. [Citations.] The *Delta* court went on to state that if the defendant appears in the action by filing a

demurrer, he moots the very point [personal jurisdiction] he is seeking to raise." (*Delta*, 146 Cal.App.3d at p. 1036.)

Borsuk explained that this analysis in *Delta* was wrong: "If the landlord has properly served the summons and unlawful detainer complaint, the court necessarily has acquired personal jurisdiction over the tenant." (*Borsuk*, 242 Cal.App.4th at p. 61.) This is true regardless of whether (i) the unlawful detainer claim is joined with other claims, or (ii) the filing of a demurrer constituted a general appearance, as it did at the time of *Delta*. In other words, *Borsuk* rejected *Delta's* premise that the use of a five-day summons can amount to a jurisdictional defect when the plaintiff is making an unlawful detainer claim because of alleged underlying issues with the merits of the complaint.

Further, *Borsuk* clarified that *Delta*'s concern that the filing of a demurrer would moot the issue of personal jurisdiction because a demurrer amounted to a general appearance is now unfounded in light of the 2002 amendment of CCP section 418.10 to add subdivision (e). (*See Air Machine Com SRL v. Superior Court* (2010) 186 Cal.App.4th 414, 420.) Under subdivision (e) of CCP section 418.10:

> A defendant or cross-defendant may make a motion under this section [418.10] and simultaneously answer, demur, or move to strike the complaint or cross-complaint.
>
> (1) ... no act by a party who makes a motion under this section, including filing an answer, demurrer, or motion to strike constitutes an appearance, unless the court denies the motion ....

Fifth, *Borsuk* observed that besides the flaws in *Delta*'s reasoning and its overly broad language, the holding of the case is expressly limited to its facts. Though *Delta* included dicta regarding uses of a motion to quash,

the actual holding was limited to its facts concerning the lack of a notice terminating the tenancy:

> This appeal raises the issue of whether a tenant in an unlawful detainer action is entitled to quash service of summons where the underlying complaint fails to state a cause of action for unlawful detainer. ***Under the circumstances of this case***, we hold in the affirmative.

(*Delta*, 146 Cal.App.3d at pp. 1034-35 [emphasis added].)[9]

Given the foregoing, *Borsuk* stated that "the holding of *Delta* (despite the decision's all-encompassing language) is limited to the circumstances of *Delta*." (*Borsuk*, 242 Cal.App.4th at p. 616.) Accordingly, (1) there was never any basis to apply *Delta* to situations beyond its narrow circumstances, and (2) it has been readily apparent, since *Borsuk*, that *Delta* was not correctly decided and that a motion to quash is not the proper procedure to challenge whether a plaintiff has pleaded the requisite elements to state a cause of action for unlawful detainer, as further discussed below.

IV.
STANDARD OF REVIEW

"A defendant who seeks review of an order denying a motion to quash must ordinarily petition the appellate court for a writ of mandate. (Code Civ. Proc., § 418.10, subd. (c))." (*Am. Express Centurio Bank v. Zara* (2011) 199 Cal.App.4th 383, 387.) "When a defendant argues that service of summons did not bring him or her within the trial court's jurisdiction, the plaintiff has the burden of proving the facts that did give the court jurisdiction, that is the facts requisite to an effective service.

---

[9] As *Borsuk* explains, the circumstances in *Delta* "were that the complaint failed to allege proper service of a notice to pay or quit." (*Borsuk*, 242 Cal.App.4th at p. 616.)

[citation]." (*Ibid.*) "When an issue is tried on affidavits, the rule on appeal is that those affidavits favoring the contention of the prevailing party establish not only the facts stated therein, but also all facts which reasonably may be inferred therefrom, and where there is a substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed. [citation]." (*Ibid.*) However, the court's statutory interpretations and legal conclusions are independently reviewed. (*Ibid.*)

V.
ARGUMENT

The writ petition should be denied because the Superior Court correctly applied the law when it denied the motion to quash. Petitioner Stancil's argument that he should have been allowed to test the sufficiency of the complaint through a *Delta* motion was without merit because that decision was wrongly decided and correctly disagreed with by the Court of Appeal in *Borsuk*. However, even if the Court ultimately concludes that *Delta* may survive, there is ample reason to affirm the Superior Court's decision to deny the motion to quash given that Stancil provided no facts in support of his motion and sought to advance an argument that is not a defense to an unlawful detainer claim.

A. *Borsuk* Comports with Procedural and Substantive Law; *Delta* Does Not.

The writ petition should be denied because the Superior Court correctly denied Stancil's motion to quash. *Borsuk* correctly held that it is improper to test whether an unlawful detainer complaint states a cause of action by bringing a motion to quash service. *Borsuk*'s holding is consistent with other California decisions, while *Delta* created an unjustified anomaly in unlawful detainer actions.

1. This Court Should Disapprove *Delta*.

Delta was wrongly decided, as the Second District determined in *Borsuk*. *Delta* called for an unjustified departure from the otherwise uniform approach in California toward personal jurisdiction and what points may be raised through motions to quash. Further, some of the reasoning underlying *Delta* is outdated and unsound.

a. Motions to Quash Are Limited to Assessing Personal Jurisdiction.

The principal premise of *Delta* is that use of a five-day summons to hale a defendant into court is improper where the complaint does not state a cause of action for unlawful detainer. *Delta* confused the distinction between personal and subject matter jurisdiction.

Before approving a plaintiff's attempt to bring a defendant into court, state court judges have traditionally sought to ensure that the defendant is subject to the sovereign authority of the state's judicial system, and that the defendant has proper notice of the suit. (Kreutzer, *Incorporating Personal Jurisdiction* (2014) 119 Penn St. L. Rev. 211, 217-218.) When courts go through this exercise, they determine whether there is personal jurisdiction in the case. (*Ibid.*) This is true in California as well. Here, "[t]he rendition of a valid personal judgment against a defendant requires that he be a member of the class subject to its power and that he have proper notification of the action, with an opportunity to appear therein. (*Allen v. Superior Court in and for Los Angeles County* (1953) 41 Cal.2d 306, 309.) ***The "nature of the action" has no bearing on the personal jurisdiction inquiry***. (*Greener*, 6 Cal.4th at pp. 1035-36 [emphasis added].)

In California, the prerequisites of personal jurisdictional include three factors: "(1) Jurisdiction of the state, based upon there being sufficient minimum contacts existing 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.)[10]

California unlawful detainer actions involve real property in California, the possession of which is usually disputed by California residents and entities. Thus, an unlawful detainer brought in California by definition constitutes exercise by a California court of its sovereign authority over the defendant. The key personal jurisdiction questions in an unlawful detainer case are typically whether the summons complied with statutory requirements, and whether it provided notice and opportunity for a hearing.

An unlawful detainer summons must demand that a defendant respond within five days. (CCP § 1167.) The summons must otherwise conform with CCP section 412.20, which requires a defendant to be informed of the court the action is pending in, the names of the parties to the action, the deadline the defendant faces for filing a responsive pleading, and limited other information. (*Ibid.*) To support personal jurisdiction, the summons must also have been properly served, according to statute. By complying with the statutory requirements for a summons, a party will have necessarily given notice and an opportunity for the defendant to be heard.

Given this statutory framework, reviewing the substance of an unlawful detainer complaint on a motion to quash does not make sense because it does not advance the fundamental concerns addressed by the court's personal jurisdiction inquiry. Regardless of the merits of the

---

[10] The exercise of personal jurisdiction in California must also be consistent with the U.S. Constitution. (CCP § 410.10.) The U.S. Supreme Court has previously considered this constraint by asking whether the exercise of jurisdiction over a defendant offends "traditional notions of fair play and substantial justice." (*Shaffer v. Heitner* (1977) 433 U.S. 186, 207.)

complaint, the Legislature has determined that five-days' notice fairly balances defendants' right to notice and property owners' right to obtain prompt recovery of their property.

California's approach to enforcing foreign judgments helps illustrate this point. Complaints seeking to enforce foreign judgments are similar to unlawful detainer actions in that, for either to ultimately be meritorious, the plaintiff must have successfully completed some service requirements before litigation commences in a California court.[11] For example, in *Nelson v. Horvath*, the defendant alleged that he had not received proper service of a citation or subsequent judgment in Texas, and that therefore service of the summons in California seeking to enforce the Texas judgment should be quashed. (*Nelson v. Horvath* (1970) 4 Cal.App.3d 1, 3.) However, while it might be true that a failure to serve in Texas could ultimately prevent enforcement of the judgment, *Nelson* held that motions to quash in such instances are nonetheless limited to the question of whether there were defects in the issuance of the summons or in the manner in which process was served *in California*. (*Id.* at p. 4.) It is not permissible to attack the underlying judgment through a motion to quash because "the motion to quash service must be strictly limited to the point of no jurisdiction over the person of the moving party." (*Ibid.*) Thus one cannot move to quash service in California based on alleged earlier flaws in service that might call the plaintiff's foreign judgment into question.

Motions to quash in unlawful detainer actions should be similarly limited in scope for the same reason. While there are prerequisites to filing

---

[11] Obtaining a *valid* foreign judgment of course requires that the service requirements of that foreign jurisdiction be fulfilled. (*Nelson v. Horvath* (1970) 4 Cal.App.3d 1, 3 ["It is not disputed that invalidity of a foreign judgment may be shown by extrinsic evidence [citation] including evidence that process upon which the judgment was based was never served [citation]."].)

a meritorious unlawful detainer complaint, such as proper service of a notice to quit, a motion to quash service is an improper way of testing whether those prerequisites have been fulfilled because those prerequisites do not go to the question of whether the court has "jurisdiction over the person of the moving party." (*Ibid.*)

Delta's holding that a defect in an unlawful detainer complaint necessarily causes a jurisdictional defect is inconsistent with evaluation of personal jurisdiction in California. Where a summons that meets the statutory requirements is properly served, it provides notice and an opportunity to be heard, and there is nothing unfair or unjust in connection with a defendant having to respond on five-days' notice. This Court should disapprove *Delta* and the line of cases that follow it, and clarify that jurisprudence regarding personal jurisdiction in unlawful detainer cases is consistent with the rules articulated in *Greener*, 6 Cal.4th at p. 1034-35, *Allen*, 41 Cal.2d at p. 309, *Goldman*, 160 Cal.App.4th at p. 263, and *Nelson*, 4 Cal.App.3d at p. 3.

b. *Delta*'s Concerns About Potential Acquiescence to Personal Jurisdiction Are Misplaced and Outdated,

Delta states that "a motion to quash service is the only method by which the defendant can test whether the complaint states a cause of action for unlawful detainer and, thereby, supports a five-day summons. A general demurrer only tests whether the complaint states a cause of action for *something*, even if it is on a cause of action other than unlawful detainer. (*Delta*, 146 Cal.App.3d at p. 1036 [italics in original].) As *Borsuk* observed, this "reasoning begs the question." (*Borsuk*, 242 Cal.App.4th at p. 615.) If the demurrer process reveals that the plaintiff has pled a claim for something other than unlawful detainer, the plaintiff can then proceed on that other theory. More importantly, *Delta*'s concern that a defendant will lose the ability to make a motion to quash if it has to file a

demurrer is moot. Since CCP section 418.10 was amended in 2002 to add a subdivision (e), which allows a party to file a motion to quash for lack of personal jurisdiction before or simultaneously with a demurrer, a defendant can still make a special appearance without waiving the party's jurisdictional challenge. (*Id.* at p. 612.)

c. Resuscitating *Delta* Would Force Courts to Delve into Factual Questions Before the Defendant Has Answered the Complaint or Filed a Demurrer.

Motions to quash in unlawful detainer cases are frequently decided on factual evidence at a hearing before the defendant has filed a demurrer, let alone answered the complaint. (*Borsuk,* 242 Cal.App.4th at p. 614, fn. 4.) *Borsuk* correctly criticized *Delta* for "shunting aside the limitations of a motion to quash," which should not "involve a determination of facts related to the merits of the case . . . [and] does not serve the function of a demurrer." (*Id.* at pp. 613-14 [citing *School Dist. Of Okaloosa County v. Sup. Ct.* (1997) 58 Cal.App.4th 1126, 1123, and *Kroopf,* 183 Cal.App.3d at p. 1360].) Given the flaws in *Delta*'s jurisdictional arguments, there is no good reason to create an exception in the unlawful detainer context to conduct fact finding at an early stage in the case, where that is not the practice in other civil litigation. Fact finding early on runs counter to the Legislature's instruction that the motion to quash be on the ground of "lack of jurisdiction of the court over" the defendant. (CCP § 418.10(a).)

d. Policy Reasons Also Support Disapproving *Delta.*

Delta is also subject to criticism on policy grounds inherent to unlawful detainer actions. Unlawful detainer actions are summary proceedings that are supposed to proceed rapidly. The purpose of the unlawful detainer statute is to provide a summary remedy to property owners so that they do not resort to self-help. (*See* Moskovitz et al., Cal. Landlord-Tenant Practice (Cont.Ed.Bar 2d ed. 2018) Unlawful Detainer:

Preparing and Filing the Action, §§ 9.1, 9.6.) Disapproving *Delta* and the cases that followed its holding would help advance these goals by streamlining unlawful detainer actions. Courts and practitioners would be able to assess quickly what is, and is not, the proper subject of a motion to quash. *Delta* creates confusion and the possibility for unnecessary litigation over the proper subject of a motion to quash. A bright line rule would eliminate this.

Disapproving *Delta* would not be unfair to tenants. Those who have valid objections to a complaint could advance the same arguments on a pleadings challenge, e.g., demurrer or motion to strike, or could move for summary judgment. If a tenant also believes that there is a defect in the summons (aside from the merits of the underlying complaint), he or she could still file a motion to quash in addition to these other motions while preserving his or her procedural rights. (CCP § 418.10(e).) Disapproving *Delta* would make the rules governing unlawful detainer actions clearer and more efficient.

2. *Borsuk* Complies with Existing Law.

Unlike Delta, the holding in *Borsuk* is consistent with the law of CCP sections 418.10 and 1167.4, and with the substantive law of unlawful detainer. Consistent with generally applicable law, *Borsuk* held that "a motion to quash service of summons is not the proper remedy to test whether a complaint states a cause of action for unlawful detainer or service of a notice to pay or quit." (*Borsuk*, 242 Cal.App.4th at p. 616.) And just like other applicable law, the defendant can test the sufficiency of the complaint by pleadings challenge, e.g., demurrer or motion to strike, not by a summons challenge. (*Id.* at p. 617, fn. 7.)[12] No case other than *Delta* and

[12] Or, an unlawful defendant may move for summary judgment on the ground that the "action has no merit." (*Borsuk*, 242 Cal.App.4th at p. 617, fn. 7 [citation and internal quotation marks omitted].)

the few cases that have unquestionably followed it (prior to *Borsuk*) holds that a motion to quash may be used to determine whether a complaint states a cause of action for unlawful detainer. Nor do any other cases hold that the failure to state an unlawful detainer cause of action undermines personal jurisdiction over the defendant.

Borsuk's approach is consistent with another court of appeal decision regarding unlawful detainer actions, *Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509. In *Saberi*, an unlawful detainer plaintiff served a 30-day notice to quit and subsequently brought an unlawful detainer action after the tenant failed to vacate. (*Id.* at p. 511.) The tenant also failed to pay rent during the notice period. (*Id.* at p. 512.) The plaintiff's prayer for relief sought rent due prior to the termination of the tenancy ("pre-termination rent"), which was improper. (*Ibid.*) The defendant argued that the service should be quashed because of the flaw in the relief sought in the underlying complaint. (*Ibid.*) The Court agreed that the relief sought was improper, citing *Castle Park*, which *Delta* also relied on. (*Id.* at pp. 512-13.) However, it disagreed with *Castle Park* to the extent that it suggested that such a flaw required the court to quash service. (*Id.* at p. 517.) Instead, the *Saberi* Court held that the proper means to attack the flawed damages request was through a motion to strike. (*Ibid.*) Thus another appellate decision significantly undercuts the case support *Delta* relies on, illustrating that *Borsuk* was correct to disagree with *Delta*.

Moreover, *Borsuk* is consistent with this Court's general statement in *Greener v. Workers' Comp. Appeals Bd.* that "personal jurisdiction is not determined by the nature of the action, but by the legal existence of the party and either its presence in the state or other conduct permitting the court to exercise jurisdiction over the party." (*Greener*, 6 Cal.4th at pp. 1034-35.) *Borsuk*'s statement that "if the landlord has properly served the summons and unlawful detainer complaint, the court necessarily has

acquired personal jurisdiction over the tenant" is wholly consistent with *Greener*. (*Borsuk*, 242 Cal.App.4th at p. 615.) While this Court previously declined to reach the issue of whether these principles should extend to unlawful detainer actions (*Greener*, 6 Cal.4th at p. 1036, fn. 5), it now has the opportunity to do so.

B. Even if the Court Were to Permit Motions to Quash to Challenge Whether a Complaint States a Cause of Action for Unlawful Detainer, It Should Deny the Petition.

Even if the Court were to decide that the rule stated in *Delta* should survive, at least in part—e.g., where the complaint fails to allege proper service of a notice to quit—this Court should still deny any relief. Stancil argued the City lacked capacity to sue, a defense that is not appropriate in a motion to quash. Moreover, he failed to provide any competent facts in support of his motion. Finally, his defense is improper in an unlawful detainer action because it does not implicate the right to possession.

1. Stancil's Motion to Quash Improperly Challenged the City's Capacity to File an Unlawful Detainer Action Against Him, Not the Propriety of a Five-Day Summons.

Even under *Delta*, the trial court's decision to deny Stancil's motion to quash is correct. Stancil moved to quash on the ground that the City lacks capacity to file an unlawful detainer compliant against him. (RR00016.) But an argument that the plaintiff lacks capacity to sue should not be presented through a *Delta*-styled motion. To the extent that *Delta* arguably should survive, such a motion tests whether a complaint states a cause of action for unlawful detainer, and thus whether a five-day summons was properly used. (*Delta*, 146 Cal.App.3d at p. 1035.) An argument that the wrong arm of the City is exercising authority over the property does not go to the question of whether the City has pled the elements of an unlawful detainer action (and, accordingly, used the right type of summons). It goes to the question of the plaintiff's capacity. That question has nothing to do

with the court's "jurisdiction ... over" the defendant. (CCP § 418.10(a)(1).) The Superior Court was correct that a motion to quash is the wrong procedure to advance an argument about a plaintiff's capacity to sue.

2. Even if the Capacity Question Was Properly Raised by Motion to Quash, the Motion Lacked Merit.

Regardless of the propriety of Stancil's motion to quash, it was properly denied because it was not supported by any competent facts. Moreover, it attempted to advance an affirmative defense that is not allowed in unlawful detainer actions.

a. The Motion to Quash Failed to Rely on Any Potentially Relevant Facts.

On a demurrer, and by extension, a *Delta*-styled motion, the Court must accept the facts alleged in the complaint as true. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A defendant may also request the court to take judicial notice of documents or facts. (*Sirott v. Latts* (1992) 6 Cal.App.4th 923, 928.) However, Stancil did not submit a request for judicial notice with his motion. Nor did he submit a declaration. Given that there was no factual foundation for his argument, the Superior Court properly denied his motion. (See *SKF Farms v. Superior Court (Hummingbird Inc.)* (1984) 153 Cal.App.3d 902 [demurrer tests pleadings alone and not evidence or other extrinsic matters, and thus, it lies only where defects appear on the face of pleading or are judicially noticed]; see also CCP § 430.70 ["When the ground of demurrer is based on a matter of which the court may take judicial notice ..., such matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of invoking such notice"].)[13]

---

[13] If this Court allows *Delta* motions, they should be governed by the same rules as demurrers because they test the same issue: whether the

The City's complaint plainly states a cause of action for unlawful detainer. (RR00315-318.) Stancil and the City signed a Live Aboard Rental Agreement, which gave Stancil the right to use a berth at the City's marina for residential purposes, for the term and under the conditions set forth therein. (RR00317, ¶ 6; RR00320-330.) The Agreement was terminable upon 60-days' notice to quit. (RR00322, ¶ 4.A.) The City served proper notice to quit. (RR00317, ¶¶ 11-12; RR00337-339.) When defendant failed to quit, the City filed its Complaint. (RR00317, ¶ 13.)

b. Stancil's Argument that the City Cannot File an Unlawful Detainer Action Against Him Fails.

Although it did not reach the issue because of its decision to follow *Borsuk,* the Superior Court's ultimate conclusion to reject the motion to quash was proper for another reason. The issues in an unlawful detainer case are extremely limited. (*Vasey v. California Dance Company* (1977) 70 Cal.App.3d 742, 746-47.) The only triable issue is the right to possession of the disputed premises, along with incidental damages resulting from the unlawful detention. (*Ibid.*) A tenant can only raise an issue or affirmative defense that relates to the issue of possession when the right to remain in possession would be preserved if the tenant prevailed on the issue. (*Green v. Superior Court* (1974) 10 Cal.3d 616, 633 [a tenant may only raise a defense, "which, if established, would result in the tenant's retention of the premises"].) If the City lacks the right to evict Stancil because of a lack of authority over the property, it lacked authority

---

complaint states a cause of action. Some courts appear to believe otherwise, revealing yet another layer of confusion surrounding *Delta*. (See *Parsons*, 149 Cal.App.4th Supp. at p. 7 [argument on *Delta* motion was not limited to face of the complaint, and plaintiff needed to respond to defendant's motion to quash by providing additional evidence proving up the "jurisdictional facts" alleged in the complaint regarding pre-suit notice].)

to sign an agreement in the first instance. Accordingly, Stancil has no right to occupy or use the berth.

Although the issue of the City's right is an issue of authority, to the extent Stancil has properly characterized it as one of title, the unlawful detainer cases regarding title are instructive. It has long been black letter law that a defendant may not attack the plaintiff's title in an unlawful detainer case. (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159 [trial court properly held that the right to possession alone was involved, and the broad question of title could not be raised and litigated by cross-complaint or affirmative defense]; *Evans v. Superior Court* (1977) 67 Cal.App.3d 162, 170-71 [to the same effect].) Stancil signed his Live Aboard Rental Agreement with the City, which gave proper notice, and the City is therefore the proper plaintiff. (RR00330.) The Superior Court properly denied the motion to quash.

VI.
CONCLUSION

Delta was wrongly decided, as the Second District determined in its 2015 decision in *Borsuk*. This Court should disapprove *Delta* because it improperly assessed what was relevant to exercising a court's personal jurisdiction over an unlawful detainer defendant, it brought factual inquiries into the motion to quash process in an improper way, and it created procedural inconsistencies. The types of arguments made through *Delta* motions should be made by a pleadings challenge, e.g., a demurrer, not a summons challenge. Even if the Court disagrees and validates *Delta*, the Superior Court's decision denying the motion to quash was correct based on the type of argument advanced and Petitioner's failure to provide factual support to the Superior Court.

Dated: April 29, 2019

Respectfully Submitted,

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

MICHELLE MARCHETTA KENYON
KEVIN D. SIEGEL
RANDALL G. BLOCK
MAXWELL BLUM
Attorneys for Plaintiff and
Real Party in Interest
CITY OF REDWOOD CITY

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that under Rule 8.204(c)(1) of the California Rules of Court, the Opposition is produced using 13-point Times New Roman type including footnotes and contains approximately 8,421 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: April 29, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By: _____
MICHELLE MARCHETTA KENYON
KEVIN D. SIEGEL
RANDALL G. BLOCK
MAXWELL BLUM
Attorneys for Plaintiff and
Real Party in Interest
CITY OF REDWOOD CITY