Civ. No. S253783

SUPREME COURT OF THE STATE 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

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

APPLICATION TO FILE BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL PARTY IN INTEREST CITY OF REDWOOD CITY

and

BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL PARTY IN INTEREST CITY OF REDWOOD CITY

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APPLICATION TO FILE BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL-PARTY-IN-INTEREST CITY OF REDWOOD CITY

TO THE HONORABLE TANI CANTIL-SAKAUYE,

CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT

INTRODUCTION

Pursuant to California Rule of Court 8.520(f)(1), the California Apartment Association (hereafter "CAA") respectfully applies for leave to file the accompanying amicus curiae brief in support of real-party-in-interest City of Redwood City. This application is timely made, i.e., on or before May 24, 2019, per the court's Order to Show Cause filed March 27, 2019.

THE AMICUS CURIAE

CAA is the largest statewide rental housing trade association in the country, representing more than fifty thousand owners and operators who are responsible for nearly two million rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing and to promote the availability of high quality rental housing in California.

INTEREST OF AMICUS CURIAE

CAA is an organization of 50,000 rental property owners and managers who are responsible for nearly 2 million rental units throughout the state of California. CAA is the largest statewide rental housing trade association in the

United States, with a diverse membership ranging from California's largest property management companies and developers, to individuals who own a single rental unit. CAA's primary mission is to advocate on behalf of rental housing providers in state and local legislative, regulatory, and judicial arenas. CAA and its members have a strong interest in preserving their ability to purchase, sell, manage, and recover possession of real property and to exercise their constitutional and statutory rights with respect to real property they own or manage in California. As part of its mission, CAA provides legal resources and/or financial support for litigation (primarily through filing or funding amicus briefs) that will have a statewide impact on the members' business success, generally focused in the areas of liability, rent control, and private property rights.

CAA's membership is greatly impacted by the ever-changing dynamics of California's housing laws and the constant development of landlord-tenant law through published decisional law issued by this Court, as well as the Court of Appeal and Appellate Divisions of the Superior Court. CAA believes that its amicus briefs played a significant role in the protection of landlords' interests in the following actions:

Sabi v. Sterling, 183 Cal.App.4th 916 (2010) (California's source of income discrimination law does not require landlords to participate in the federal Section 8 Housing Choice Voucher Program); Castaneda v. Olsher, 41 Cal.4th

1205 (2007) (landlords do not have a duty to evict tenants who are suspected gang members in the absence of highly foreseeable violence involving those tenants); Action Apartment Association, Inc. v. City of Santa Monica, 41 Cal.4th 1232 (2007) (unlawful detainer filings are protected by the state law litigation privilege, which prohibits a tenant from bringing a separate wrongful eviction lawsuit based on those filings); and Cook v. City of Buena Park, 126 Cal.App. 4th 1 (2005) (ordinance that (1) required landlord to file unlawful detainer action based on notice provided by the police chief that was insufficient to permit the landlord a reasonable chance of prevailing in the unlawful detainer, and (2) required that the owner prevail in the unlawful detainer action, or risk imposition of heavy fines, is inherently violative of due process).

Every year, CAA is active in the state legislature, seeking to preserve the streamlined, expedited nature of the unlawful detainer process, and opposing efforts to build additional delays into the process. Bills that CAA has sponsored or supported include the following.

In 2007, CAA supported AB 481, a bill that would require a tenant when asserting an affirmative defense of breach of warranty of habitability in an unlawful detainer action to describe the alleged breach by the landlord and provide proof that the tenant notified the landlord about the alleged problem which would avoid unmeritorious defenses that cause unnecessary delays.

In 2014, CAA supported AB 2508, a bill that would require tenants to explain within the answer to an unlawful detainer complaint the reason for the defense to the unlawful detainer, which would help the landlord prepare for trial and help the court identify any consistent unethical practice used by firms to delay evictions.

In 2014, CAA supported AB 2494, a bill that would authorize a trial court to order a party, the party's attorney, or both to pay reasonable expenses, including attorneys' fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. The bill also allowed sanctions for egregious behavior when a party could show that not only was the action objectively unreasonable, but that the person had an improper motive behind it.

In 2016, CAA supported AB 2003, a bill that would require tenants to share details of any alleged habitability concerns when responding to an unlawful detainer complaint and to specify if he or she had contacted the owner or a code enforcement officer about the alleged problems which would avoid delays (because tenants often raise unsubstantiated habitability claims to delay an eviction).

In 2016, CAA supported AB 2312, a bill that would require tenants

who are represented by counsel and who contest an unlawful detainer action to deposit with his or her attorney future contract rent that would become due during the pending unlawful detainer action, which would help stop abusive and frivolous litigation practices that cause unnecessary delays.

CAA has also opposed bills that would have increased delays in and/or the cost of the unlawful detainer process, and which were defeated.

In 2011, CAA opposed AB 934, a bill that sought to deny landlords the benefit of the "litigation privilege" for statements or communications made in the course of judicial or legislative proceedings because it would have encouraged unwarranted lawsuits by tenants against landlords for libel or slander based on statements made by landlords in litigation brought by them (including unlawful detainer litigation). In fact, the bill made clear that "the intent of the Legislature" was "to invalidate the holdings in Action Apartment Assn., Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232 and Feldman v. 1100 Park Lane Associates (2008) 160 Cal.App.4th 1467."

In 2011, CAA opposed AB 265, a bill that would have allowed a tenant to pay unpaid rent after expiration of a 3-day notice to pay rent or quit had expired, which would have caused additional delays by either forcing the landlord to wait more days before filing an unlawful detainer action to enforce the notice, or, if the case had been filed, requiring the court to stop it at any time during the

process if the tenant could pay the amount in arrears and the reasonable costs of the proceedings.

In 2019, CAA opposed SB 18, a bill that would have provided funding for free eviction defense attorneys, many of whom unethically make false claims regarding the condition of a property in order to delay the eviction process, and to allow bad tenants to stay in a rental unit rent-free, for an inordinate amount of time.

CAA has an interest in ensuring that the summary unlawful detainer statutes are fairly and properly administered by the courts. This process is essential to the viable operation of rental housing. The expedited unlawful detainer process was designed to quickly return possession to the owner. Once a tenancy has been terminated, every day the tenant holds over is a day of lost rent and a day the unit cannot be prepared for a new tenant. The unlawful detainer process takes the question of possession out of the ordinary civil action timeline, while still providing the tenant multiple opportunities to demonstrate that the landlord's claim lacks merit (for example, demurrer, motion to strike, motion for summary judgment, answer with denials and affirmative defenses followed by trial, etc.). CAA believes its views will assist the court in resolving this case by addressing the

impropriety of "Delta motions"[1] and the potentially extraordinary delay for which they have become known, from the perspective of providers of rental housing and the counsel who assist them daily in litigating unlawful detainer actions. CAA's brief illustrates some of the practical problems which can arise if tenants are allowed to use such motions to challenge the merits of the complaint itself.

CERTIFICATIONS UNDER RULE OF COURT 8.520(f)(4)

Amicus hereby affirms, pursuant to California Rule of Court 8.520(f)(4)(A)&(B), that no party or counsel for a party (1) authored the accompanying brief in whole or in part,[2] or (2) made a monetary contribution intended to fund the preparation or submission of the brief. Moreover, no person or entity "made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal."

Dated: May 23, 2019

DOWLING & MARQUEZ, LLP

By: Curtis F. Dowling
Attorneys for Amicus Curiae
CALIFORNIA APARTMENT
ASSOCIATION

[1] I.e., motions to quash filed in unlawful detainer actions under Delta Imports, Inc. v. Municipal Court, 146 Cal.App.3d 1033 (1983).

[2] The brief was solely authored by Curtis F. Dowling and Heidi Palutke.

BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL-PARTY-IN-INTEREST CITY OF REDWOOD CITY

For the reasons set forth in Borsuk v. Appellate Division of Superior Court, 242 Cal.App.4th 607 (2015), real-party-in-interest's brief, and this amicus brief, the Court of Appeal's decision in Delta Imports, Inc. v. Municipal Court, 146 Cal.App.3d 1033 (1983) (hereafter "Delta") is incorrect and should be overruled. Delta improperly allows a de facto challenge to the merits of the complaint to be brought by way of a motion designed to challenge the assertion of personal jurisdiction over a defendant. Except that "Delta motions" never raise such issues (a garden-variety motion to quash under Code of Civil Procedure § 1167.4 is perfectly sufficient for this purpose). Instead, Delta motions are used chiefly as an effective and highly unfair stalling tactic.

A. A *Delta* motion is an improper and unfair delay tactic, which bypasses normal appellate procedure and the protections afforded to landlords by Code of Civil Procedure § 1176.

Delta motions are used primarily as a delay tactic. They are used to grind eviction lawsuits down to a halt by tying such lawsuits up with petitions for extraordinary writs to appellate panels and the automatic stays of trial court proceedings which come with those petitions. See Code of Civil Procedure § 418.10(c) ("The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final

judgment in the mandate proceeding."). Since the appellate process is invoked not only before any judgment is entered, but before any answer is even filed by the defendant and before any discovery is done, the normal process of a tenant's seeking a stay of execution of a judgment and posting security into the court registry to make the landlord financially whole is bypassed.

Delta motions do not raise actual issues of personal jurisdiction relating to the manner in which the summons and complaint were served. Quite the contrary, they attack the merits of the complaint in a fashion which amounts to a de facto summary judgment motion, filed before an answer is filed, filed before affirmative defenses are asserted, and filed before any discovery is ever performed, and on 3 days notice no less, under Code of Civil Procedure § 1167.4(a) (permitting motions to quash in unlawful detainer actions to be heard on "not less than three days nor more than seven days after the filing of the notice" of motion). These de facto mini-trials at the outset of the litigation, on as little as 3 days' notice, are patently unfair to landlords.

The Court of Appeal's 2017 decision in Danger Panda, LLC v. Launiu, 10 Cal.App.5th 502 (2017) perfectly illustrates the dilatory abuse for which Delta motions are known. In Danger Panda, LLC, the tenant defendants never asserted that they had not been properly served with the summons or complaint, or that the Superior Court somehow lacked jurisdiction over them or the

claim being asserted against them. Instead, they directly challenged the merits of the claim by contending that the landlord plaintiff could not possibly prevail in the action. Id. at 510.

More specifically, the tenants claimed that the landlord had failed to properly pay relocation assistance which is mandatory for Ellis Act[3] evictions in San Francisco. Id. In San Francisco, when three or more "tenants" reside in a unit being withdrawn from the rental housing market under the Ellis Act, they have to equally split a capped payment of $13,500.00 per unit (which payment is adjusted annually to track with the CPI). Id. at 508-09 & fn.6. However, only someone who is a "tenant" as defined by the San Francisco Rent Ordinance is entitled to a share of the capped payment. Id. at 509.

The subject apartment was occupied by four members of a family, one of whom was a minor—i.e., Nancy Launiu, her son Donn, her daughter-in-law Olga, and her grandson David (the minor). Id. at 505. Taking the position that David could not be a "tenant" as defined by the Rent Ordinance (for example, lacking any legal capacity to contract), the owner split the capped payment three ways, and not four ways, by giving equal one-third payments to Nancy, Donn, and Olga with the tenancy termination notice. Id. at 509-10. The family did not vacate

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[3] Government Code §§ 7060 et seq.

in accordance with the termination notice, forcing the owner to file an action for unlawful detainer to recover possession of the unit. Id.

Nancy, Donn, and Olga never contested the assertion of personal jurisdiction over them. They did not answer the complaint, did not engage in discovery, did not move for summary judgment, and did not try to prevail at trial. Instead, they filed a Delta motion in which they claimed that the landlord had failed to "comply with section 37.9A(e)(3) of the Rent Ordinance because it failed to provide David with a separate relocation payment, notwithstanding the fact that he was a 'tenant' under the Rent Ordinance." Id. at 510.

The landlord opposed the motion and contended that David could not possibly be a "tenant" as defined by the Rent Ordinance. Id. at 511. Noting that all four persons concerned were immediate family members, the landlord "maintained that it complied with section 37.9A(e)(3) of the Rent Ordinance by 'paying the full amount of relocation [payment] to the tenants,' and once 'the family' received that maximum payment, they were free to divide the funds as they saw fit." Id.

The trial court heard the motion, decided that the term "tenant" as defined by the Rent Ordinance included minors, and then held that, because the capped payment had not been split four ways with Donn, Olga, and David

collectively receiving ¾ of the capped payment,[4] "[t]his lowered the sum parents & minor child would have received in total." Id. at 511. The Appellate Division of the San Francisco County Superior Court agreed and affirmed the order granting the Delta motion. Id. After granting a petition to transfer the appeal to the Court of Appeal, and articulating numerous persuasive reasons for doing so, the Court of Appeal reversed, finding that the term "tenant" as defined by the San Francisco Rent Ordinance did not include minors like David. Id. at 512-23.

The tenancy termination notice was served on March 26, 2014. Id. at 509-10. The unlawful detainer action was filed in April, 2015.[5] Id. at 510. The Delta motion was filed on May 20, 2015. Id. The trial court granted the Delta motion on June 1, 2015. Id. at 511. The Appellate Division affirmed the trial court's order **more than one year later** on July 15, 2016. Id. The Court of Appeal reversed approximately 9 months later on April 4, 2017. In short, a 1-year termination period was instead effectively extended to **three years** by a woefully dilatory Delta motion. And with no financial security for the landlord while the case was tied up in appellate courts.

Had the tenants answered, had the tenants prevailed on summary judgment or at trial, and had the owner then appealed a judgment against it, only to

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[4] And Nancy receiving one quarter instead of one third.

[5] Ellis Act withdrawals entail a 1-year termination period in cases involving elderly and disabled tenants. Danger Panda, supra, at 510, fn.8.

get it reversed on appeal, so be it. But, had the landlord prevailed in such a trial, and the tenants were to then appeal an adverse judgment (raising the issue whether a minor could be a "tenant"), then the tenants would have been obligated to pay the daily rental value of the unit as a condition of securing a stay of execution of the judgment. See Code of Civil Procedure § 1176(a) (in granting a stay, the court "shall order the payment of the reasonable monthly rental value to the court monthly in advance as rent would otherwise become due as a condition of issuing the stay of enforcement"). Had the landlord convinced the trial court to deny the Delta motion in Danger Panda, and the tenants had then pursued multiple appeals in the Appellate Division and Court of Appeal spanning almost 2 years of time, the tenants would have completely bypassed the requirements of C.C.P. § 1176(a), to the obvious detriment of the landlord. The landlord could have lost what amounted to two years of unpaid rent. Considering that the landlord prevailed in the Court of Appeal in Danger Panda, this is precisely what did in fact happen.

In addition to delay, Delta motions are indisputably misused to force (or attempt to force) mini-trials on the merits before answers are even filed. A glaring example is the one filed in 3301-3311 Cesar Chavez Street, LLC v. Osorio, et al., San Francisco County Superior Court, Limited Jurisdiction, case #CUD-15-

652075.[6] (Dowling Declaration at Exhibit "A.") The memorandum reveals that the tenants did not contest the assertion of personal jurisdiction over them. Instead, they sought to prove that a 3-day notice to cure a covenant of lease or to quit was "invalid because it is based on a 'forged' residential lease." (Dowling Declaration at Exhibit "A" at 4:1.) The memorandum notes a revolving chain of occupancy in the subject apartment going back to 1995, an exchange of emails between counsel for the new owner and the tenants concerning the existence (or not) of a written lease agreement, the service of a 3-day notice, and the tenants' ultimate assertion that the lease on which the action was based had been forged. (Dowling Declaration at Exhibit "A" at 1:24-4:12.) The memorandum cites the extrinsic evidence offered in support of the motion, and notes that "[t]he declarations challenge the 'forged' residential lease which forms the basis of the improper NOTICE and the unlawful detainer action is based on the improper NOTICE." (Dowling Declaration at Exhibit "A" at 5:13-18.)[7]

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[6] The tenants in this case were represented by the same law firm which represented the tenants in the Danger Panda, LLC case—i.e., the Tenderloin Housing Clinic.

[7] The trial court denied the motion, and the tenants petitioned the Appellate Division of the San Francisco County Superior Court for an extraordinary writ, thereby improperly and unfairly delaying the case. (Dowling Declaration at Exhibit "B.") In that petition, the tenants incorrectly claimed that "the appeal procedure is inadequate because Petitioners will be forced to litigate this unlawful detainer action to a final judgment before an appeal can even be filed." (Dowling Declaration at Exhibit "B" at 18:10-12.) Trial and appeal are perfectly adequate. Rather than proceed to trial before a jury, the tenants wanted the trial court to dismiss the case with a mini-trial on the merits before they even answered the

Needless to say, the question of forgery is eminently one which would have to be decided by a jury at a trial. An unlawful detainer action is an action "at law" and is thus subject to the constitutional right to trial by jury. See Cal. Const. Art. I, § 16; Code of Civil Procedure § 1171 ("Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases.")[8] In the face of disputed evidence, a court would necessarily have to weigh evidence and decide a fact issue relating to the ultimate merits of the case in order to decide the Delta motion, usurping the province of the jury. Delta is incorrect in creating such an anomaly—a mini-trial on the merits, with no jury, no answer, no affirmative defenses, and no discovery.

The Delta motion procedure eviscerates the constitutional right to a jury trial.

B. *Delta* should now be overruled.

Delta improperly expanded the logic and holding of Greene v. Municipal Court, 51 Cal.App.3d 446 (1975) into cases which indisputably involve landlord-tenant relationships and causes of action for unlawful detainer, even if poorly pleaded. In other words, cases which indisputably call for a 5-day

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complaint. The Appellate Division denied the petition, noting that an argument "bear[ing] on the complaint's merits" could not be "properly considered on a motion to quash." (Dowling Declaration at Exhibit "C" at pg. 2.) The tenants would eventually file not only a demurrer to the complaint, but also a motion for summary judgment. (Dowling Declaration at Exhibit "D.")

[8] This statute specifically governs trials in unlawful detainer actions.

summons, even if destined to fail on the merits. What Delta has improperly done is allow the cart to be put before the horse: that is, to allow the most hyper-technical arguments relating to the merits of the cause of action to be used at the outset of the litigation to show that the claim cannot be won and therefore never should have been called one for "unlawful detainer." The position is based on the fallacy that an unsuccessful claim for unlawful detainer is therefore **by definition** a claim for something else that requires a 30-day summons. This is not true. The claim is one for unlawful detainer—it is just not a viable one, or is one that needs amending, etc.

In Greene, the plaintiff filed a complaint which essentially sought "a declaration of rescission of the contract of sale for breach by the purchasers, recovery of possession of the property, and incidental damages," but styled it as an unlawful detainer claim. Id. at 451. Given these circumstances, the court held that the former Municipal Court did not have jurisdiction over the claim and that the defendant had improperly been deprived of the right to be sued on a 30-day summons. Id. at 451-52. The court in Greene emphasized **the absence** of any allegations showing the existence of a landlord-tenant relationship, or other similar relationship, warranting a 5-day summons:[9]

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[9] Borsuk correctly notes that nothing in Greene supports the idea of using a motion to quash to challenge the merits of the subject claim. No such thing happened in Greene. Borsuk, supra, at 614.

> Here the complaint does not allege a situation to which the remedy of unlawful detainer applies. It does not claim that defendants were at any time employees, agents or licensees of plaintiff. It does not allege that plaintiff is the purchaser of the premises at an execution or foreclosure sale or at a private sale pursuant to a deed of trust or mortgage. Nor does the agreement which is incorporated in the complaint create the relationship of lessor and lessee. The relationship created by the agreement must be characterized by reference to the rights and obligations of the parties and not by labels . . . . The rights and obligations of plaintiff and defendants are those of seller and buyer in a conditional sale of real property. The provision of the agreement allowing plaintiff-seller to retain the down payment and subsequent payments in the guise of rent in the event of default is an unenforceable attempt to specify potentially excessive damages recoverable by plaintiff-seller in the event of breach by defendants-purchasers.

Greene, supra, at 450-51.

Unlike Greene, the claim in Delta was indisputably against a tenant, so that there was no genuine dispute about the existence of a landlord-tenant relationship. Id. at 1035. The landlord's eviction claim was poorly pleaded because the complaint did not allege the proper service of a written tenancy termination notice, but the intention was clear enough.

Delta states that a general demurrer merely tests whether any kind of claim is made, and not specifically whether an unlawful detainer claim is made, suggesting that a motion to quash is the only procedural device available for this

purpose. Id. at 1036.[10] However, this is not the case. Code of Civil Procedure § 1170 permits a tenant defendant to file a demurrer in an unlawful detainer action. Delta does not even consider this provision. If a claim for unlawful detainer is not properly pleaded, then a court can ultimately sustain a demurrer without leave to amend and dismiss the case, even if the plaintiff could have pleaded some other kind of claim that would have entailed use of a 30-day summons. The reason is precisely the plaintiff's choice in proceeding on a 5-day summons. Once the plaintiff chooses to file an action for unlawful detainer and has a 5-day summons issued, the plaintiff's claim must be properly pleaded not just as some possible claim under some possible theory, but specifically as a claim for unlawful detainer and only unlawful detainer, lest a demurrer be sustained without leave to amend under Code of Civil Procedure § 1170.

Delta therefore incorrectly 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." Id. at 1036. Code of Civil Procedure § 1170 contemplates a tenant defendant's using a demurrer to challenge the sufficiency of the claim as one **for unlawful detainer**.

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[10] Delta also cites Greene as support for this proposition, but the cited pages (451-452) do not say this.

What Greene fundamentally dealt with was the misuse of Code of Civil Procedure § 1167 and the issuance and use of a 5-day summons for a claim that had nothing to do with unlawful detainer. It did not deal with cases which indisputably involved landlords and tenants, claims for unlawful detainer, and highly technical nitpicking arguments on the ultimate merits of the claim—for example, whether the landlord had "strictly complied" with all applicable eviction requirements, as happened in Danger Panda, LLC. A concern with the absence of any allegations establishing the kind of relationship that would justify use of a 5-day summons (Greene) was then improperly expanded to allow mini-trials on the merits in cases indisputably involving landlord-tenant relationships and claims for unlawful detainer. In this case, petitioners seek to litigate the very merits of a well-pleaded claim at the outset of the case, without a jury. Again, this reasoning is fallacious because it improperly conflates the ultimate merits of the claim with jurisdiction over it. What this misuse of Delta has done is almost require a plaintiff landlord to show even more than a probability of prevailing on the merits, at the outset of the case. Borsuk correctly puts a stop to this.

Borsuk cited a number of authorities which stand for the proposition that a motion to quash cannot challenge the merits of the cause of action and cannot serve the same function as a demurrer, but this is precisely how Delta motions are used. Borsuk, supra, at 613-14. Borsuk itself shows the basic

impropriety of a Delta motion. In Borsuk, the tenant did not deny that she was the landlord's tenant. Instead, she denied his factual allegation that he had properly served her with an eviction notice. She did not even contest the validity of the notice, or the landlord's right to have served it. She simply sought to defend the case by showing the notice had not been properly served. Id. at 610. This is nothing like the problem presented by Greene. Just like Borsuk, petitioners here do **not** deny a landlord-tenant relationship with the City of Redwood City. (Petition for Review at pgs. 8-9.) It is admitted that this case is one for unlawful detainer. The defensive arguments here involve nuanced and hyper-technical arguments relating to the merits of the claim itself.

None of the litigants here are non-resident defendants. Instead, they all indisputably are a landlord and tenants with respect to parcels of real property in San Mateo County. An action for unlawful detainer presents a "local" claim which must be litigated in the county in California in which the property is located. See Code of Civil Procedure § 392(a)(1). The City of Redwood City's claims indisputably belong in the San Mateo County Superior Court. If a non-resident defendant has been improperly sued in a California court because he lacks the required minimum contacts, then the filing of a demurrer would waive any jurisdictional objection. Roy v. Superior Court of San Bernadino County, 127 Cal.App.4th 337, 344 (2005). But this type of jurisdictional issue is not the kind

presented in Greene or Delta. With non-resident defendants, the issue is minimum contacts and whether that person can legitimately be sued in a California court on **any** summons, whether it be a 5-day or 30-day.

The issue in Greene is more subtle, and involved the misuse of a 5-day summons for a case that really required the use of a 30-day summons and should have been filed in the Superior Court instead of the Municipal Court. By the time of Delta, the concept had been expanded to an actual unlawful detainer action, albeit one presenting a very poorly pleaded claim. By the time of Borsuk, the tenant was raising anything but a "jurisdictional" issue, and was instead trying to prove without a trial that the owner had not properly served her with the termination notice, contrary to his allegation in the complaint. There is simply no real jurisdictional issue involved in these cases, and Borsuk recognizes that fact. Borsuk simply confines "contesting personal jurisdiction" to what it should be, and excludes from the concept attacks on the merits of the underlying claim.

Borsuk is correct. Delta is incorrect.

C. Since unlawful detainer is a summary proceeding with a tenant entitled to trial within 20 days of filing an answer, and since all normal procedural tools are available to dispose of the action if unmeritorious, unnecessary, dilatory, and unfair *Delta* motions should not be allowed to clog trial and appellate courts.

Once the tenant has answered the complaint, the case can be set for trial on a date which is no more than 20 days beyond the date of filing of the

answer. See Code of Civil Procedure § 1170.5(a) ("If the defendant appears pursuant to Section 1170, trial of the proceeding shall be held not later than the 20th day following the date that the request to set the time of the trial is made."). Prior to answering, if the tenant was not properly served with the summons and complaint, she can move to quash service. See Code of Civil Procedure § 1167.4. If the claim is poorly pleaded, or a defect appears on the face of the complaint, the tenant can also file a demurrer, as noted above. See Code of Civil Procedure § 1170. The tenant can also file a traditional motion to strike. See Saberi v. Bahktiari, 169 Cal.App.3d 509, 517 (1985). All of the standard forms of discovery are available to the tenant (e.g., depositions, interrogatories, inspection demands, admissions requests, etc.). See Code of Civil Procedure §§ 2025.270(b) (depositions); 2030.020(c) (interrogatories); 2031.020(c) (inspection demands); and 2033.020(c) (admissions requests). If evidence is needed to defeat the claim prior to trial, the tenant can move for summary judgment, on 5 days' notice. See Code of Civil Procedure § 1170.7. Or, the tenant can simply prevail at trial.

In short, a tenant has all of the necessary tools to fend off and defeat an unmeritorious unlawful detainer claim, without having to resort to a dilatory Delta motion. Unless, of course, the tenant's aim is precisely to cause delay. And the courts should not sanction such a practice.

If Delta is upheld and allowed to be a basis for motions to quash which attack the merits of the complaint, trial courts will become clogged with Delta motions, and so will appellate courts. The summary proceeding of unlawful detainer will become anything but a "summary proceeding." Unlawful detainer is designed to afford an expeditious procedure to both landlords and tenants, and any invocation of appellate power relating to the merits of the claim (or alleged lack thereof) should essentially come from appeals of judgments rendered after decisions made on or after demurrers, motions to strike, motions for summary judgment, or judgments rendered at trial. If a tenant properly contests the assertion of personal jurisdiction via a traditional motion to quash, so be it. But Delta motions are an anomaly, borne of an incorrect understanding of unlawful detainer procedure (as discussed above, in Borsuk, and in the City of Redwood City's brief), and should not be allowed. It is an unnecessary tool, unfairly employed for the purpose of delay.

CONCLUSION

Unlawful detainer is a summary proceeding in which a tenant has the normal tools designed to attack the merits of the complaint if it indeed lacks merit. Those standard tools include a demurrer, motion to strike, answer with affirmative defenses, motion for summary judgment, and a trial within 20 days of the filing of the answer. There is no need for the motion to quash procedure to be employed to

attack the merits of the complaint, forcing mini-trials on the merits, on as little as 3 days' notice, and with no discovery, no answer, no defenses, and no jury. The procedure eviscerates the landlord's constitutional right to a jury trial. The procedure is also inherently dilatory and unfair to the landlord, as it leads to a petition to the appellate division (and or Court of Appeal and/or Supreme Court), which in turn stays the action for unlawful detainer pending appellate decision(s) on the merits. All the while, the landlord gets no financial security during the delay, as the tenant is not required to pay financial security into the court registry which is otherwise mandatory on an appeal from a judgment. Delta is an anomaly, and should be overruled.

Dated: May 23, 2019

DOWLING & MARQUEZ, LLP

By: Curtis F. Dowling
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CALIFORNIA APARTMENT
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Dated: May 23, 2019

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CERTIFICATE OF WORD COUNT

The text of this brief and application to file same consist of 5,468 words as counted by the Microsoft Word word-processing program used to generate this brief.

Dated: May 23, 2019 **DOWLING & MARQUEZ, LLP**

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PROOF OF SERVICE

I, Natalie Gorospe, declare as follows: I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) and I am not a party to the within action. My business address is **625 Market Street, 4th Floor, San Francisco, California 94105**. I am readily familiar with the practices of Dowling & Marquez, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On May 24, 2019, I served the within:

(1) APPLICATION TO FILE BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL PARTY IN INTEREST CITY OF REDWOOD CITY *and* BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL PARTY IN INTEREST CITY OF REDWOOD CITY; AND

(2) DECLARATION OF CURTIS F. DOWLING IN SUPPORT OF BRIEF OF AMICUS CURIAE CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF REAL PARTY IN INTEREST CITY OF REDWOOD CITY, on all interested parties in this action as follows:

By placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Vincent J. Bartolotta, Esq. **Thorsnes Bartolotta McGuire LLP** **2550 5th Avenue, 11th Floor** **San Diego, California 92103**	**Randall G. Block, Esq.** **Burke Williams & Sorensen, LLP** **1901 Harrison Street, Suite 900** **Oakland, California 94612**
Alison M. Madden, Esq. **Madden Law Office** **P.O. Box 620650** **Redwood City, California 94062**	**Kevin Drake Siegel, Esq.** **Burke, Williams & Sorensen, LLP** **1901 Harrison Street, Suite 900** **Oakland, California 94612**
California Court of Appeal **First Appellate District, Division 4** **350 McAllister Street** **San Francisco, California 94102**	**San Mateo County Superior Court** **Appellate Division** **400 County Center** **Redwood City, California 94063**
Honorable Susan L. Greenberg **Judge of the Superior Court** **San Mateo County Superior Court** **400 County Center** **Redwood City, California 94063**	

Transmitted via:

[X] **(MAIL SERVICE)** I placed such envelope(s) for collection to be mailed on this date following ordinary business practice.

[ ] **(CERTIFIED MAIL SERVICE)** I placed such envelope(s) for collection to be mailed on this date following ordinary business practice, with first class postage and certified mail fee prepaid.

[ ] **(PERSONAL SERVICE)** I caused to be delivered such envelope(s) by hand, delivered to the office of the addressee(s).

[ ] **(FACSIMILE)** The facsimile machine I used, with the telephone number (415) 495-8590 complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original Proof of Service.

[ ] **(FEDERAL EXPRESS – NEXT DAY DELIVERY)** I placed a true and correct copy of the above described document(s) enclosed in a package designated for overnight delivery via Federal Express.

The foregoing is true and correct and is executed under penalty of perjury under the laws of the State of California at San Francisco, California on this 24th day of May, 2019.

Natalie Gorospe