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S253783

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

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
JUN 28 2019
Jorge Navarrete Clerk
Deputy

Edward Stancil,[1]
Defendant/Petitioner,

v.

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

City of Redwood City,
Real Party in Interest.

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

PETITIONER'S REPLY TO BRIEF OF AMICUS APPLICANT CALIFORNIA APARTMENT ASSOCIATION ("CAA") AND PETITIONER'S OPPOSITION TO FILING OF DECLARATION OF C. DOWLING, AND/OR IN THE ALTERNATIVE, APPLICATION/MOTION TO STRIKE DECLARATION OF C. DOWLING

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

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This is Petitioner's Reply to Brief of Amicus Applicant California Apartment Association ("**CAA**", "**Amicus**", "**Application**" and "**Brief**" herein), as well as Petitioner's Opposition to Filing of Declaration of C. Dowling ("**Opposition**"), or, in the Alternative, Application/Motion to Strike Declaration of C. Dowling ("**Dowling Dec**." and "**MTS**"). This Reply addresses the fallacies in CAA's Brief given the time available.

Petitioner only received CAA's Application and Brief, with Dowling Dec., on the afternoon of Wednesday, May 29, 2019, with this Reply due by close of business May 31, 2019. Petitioner also had to reply to Real Party's Opposition to Petitioner's Motion to Strike RJN. Accordingly, although Petitioner would have appreciated more time (the U.S. Mail was likely slowed due to the long holiday weekend), this Reply and Opposition to Dowling Dec., or, in the Alternative MTS Dowling Dec., is offered to address the Brief.

I.
UD - One Singular Exception

Petitioner acknowledges there are policies underlying California's Unlawful Detainer ("**UD**") framework that provide for, and circumscribe, the UD cause of action, as well as the Complaint and Summons, the trial of UD actions, and their execution. *See* CCP §§1161 *et seq*. (Sections 1159 & 1160 pertaining to forcible entry and detainer).

The policies underlying the summary nature of UD are multiple, and this is reflected in the limited nature of the action. It is a singular cause of action that may not be brought with any other cause or claim. Responses are limited (i.e., no cross- or counter-claims). All procedures are short-set, from first response (within 5 days of service of Summons), to hearings on a Motion to Quash (to be heard within 3 to 7 days), to the

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setting of, and disposition by, trial. Accordingly, UD is an exception, solely as a creature of statute, to many other procedures, processes, substantive claims and causes. By its very nature, it is a singular exception to a regular civil action.

II. Multiple Policies Underly the Statutory Framework and Advise Court Decisions

CAA claims first that "[its] 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." Brief, at p.2.

This is indeed true of both UD plaintiff-landlords and UD defendant-tenants. For this reason, the exacting nature of UD pleading has been briefed in our Petition for Review. There is no de minimus or "substantial compliance" standard. *See* Petition.

III. Amicus mentions multiple bills (potential legislation) that it advocated for, or against, but not success rate, nor any information on the result of these bills (i.e., whether they were even enacted)

Amicus spends four pages summarizing bills that the California legislature considered over the past 12 years, without stating which ones were actually enacted. From a review of pages 3 to 6, and a knowledge of UD law, it appears most of the bills it advocated for were not ultimately passed into law. Moreover, it takes pride in having opposed this year's, 2019 SB 18 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."

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This highly subjective and inflammatory statement is made without reference to any study, statistics, or objective evidence. Kudos to the lawmaker that introduced it and it may yet pass; it would be a welcome counterweight for balance, as CAA does not appear to admit or acknowledge that landlords do any such acts themselves.

Moreover, CAA's literal next sentence states that is has an interest in "ensuring" the "fair and proper administration" of UD by the courts. Why would pro bono counsel for UD Defendants not be a desirable means to such end?

Furthermore, CAA makes broad and sweeping statements that are not true in all instances, namely "every day the tenant holds over is a day of lost rent and a day the unit cannot be prepared for a new tenant." *Id.*, at p.6.

This is untrue, however, certainly in our case. The Council of Redwood City and its City Manager have no intention of re-letting. They are not losing income and this Writ proceeding is not precluding the marina from being "prepared for a new tenant." Indeed, if the City (either Port or Council as determined after trial) were going to keep the marina, it could simply have offered "nonliveaboard" conversions to current liveaboards, to keep their barge- or boat-based dwelling in its same slip, in a non-liveaboard (dry berth storage) capacity. Hence, CAA's advocacy is off the mark for this and many other cases.

Nor does a landlord that wants to take a rental unit off the market for an owner-movein, for instance, lose any rent or the opportunity to "ready it for the next tenant". This is all because, at the end of a UD case, if landlord wins, he or she (or it, as an entity) is absolutely entitled to rental damages for every day of hold-over. No tenant gets a "free

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ride" when they either win "or" lose a UD. Indeed, very specifically, an early decision on a MTQ, rendering judgment for UD tenant, actually lends clarity *sooner*.

If a MTQ is granted, or even a Demurrer, due to a fatal defect, the landlord can decide whether to cure the fatal defect (by giving the proper notice (quit/cure, 30-day, 60-day FHRL, etc.), or by alleging the proper branch location, or by paying the proper relocation amounts to the proper parties, etc.) and then *once again* file the UD.

If landlord is in the right, it will not lose the MTQ nor a Demurrer, the UD landlord will prevail if it has the right to possession, and it shall recover all rental damages for the days held over. The UD statutory framework is complete in its remedies to a landlord if the landlord pleads properly, has a right to possession, wins and recovers possession. But none of this speaks to the propriety of a *Delta* MTQ.

IV.
Danger Panda was a Granted MTQ under Delta: It was Landlord that Appealed a Legitimate Substantive Issue

*This section is the same as the *Danger Panda* briefing in Petitioner's Reply to Real Party's Opposition to Petitioner's Motion to Strike Real Party's RJN, to wit:

See Amicus Application of CAA, and its Brief, at p.9, in which it bemoans the legitimate inquiry, in the *Danger Panda* case, into whether a minor is a "tenant" under a San Francisco Ordinance ("**S.F. Ordinance**") that supplements California's "Ellis Act", Cal. Gov. Code §12.75. *Danger Panda, LLC v. Launiu* (2017) 10 Cal.App.5th 502.

The CAA ignores that in *Danger Panda*, the UD Defendant actually *won* the MTQ on a *Delta* basis and analysis, supporting the arguments in the instant Petition. In *Danger Panda*, it was UD *Plaintiff* that *appealed* the Superior Court's MTQ *Grant* (Quidachay,

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

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

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

Although it is true that each of these acts has policies underpinning the statutory framework, the policies underlying the S.F. Ordinance and Ellis Act are arguably more compelling than a policy generally informing an overall preference for a summary

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proceeding where right to possession is clear and a UD Plaintiff landlord has diligently conformed to the UD statutory framework in all respects. This includes having met all payment, notice and pleading requirements. There is no basis for preferring a "summary possession to landlord" policy over other legitimate policies that also underly UD, such as actually giving a 3-day cure or quit notice (*Delta*), or adequate pre-eviction compensation (*Danger Panda*), among other pre-filing or pleading mandatory requirements (such as the mandatory, statutory, heightened-venue pleading requirement at issue here).

V.
Some Other Cases Cited and Offered as Examples of Amicus Participating or Influencing the Result Appear Mis-cast or Mis-stated

Cases cited by Amicus CAA:
**Although some of these are cited as context that CAA allegedly influenced the result, they also cast these decisions in a certain light as to holdings, which do not all withstand scrutiny*

Action Apartment Association, Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232, 1252 (setting aside, in part, a local Santa Monica "Tenant Harassment" ordinance, but leaving the "termination notice service" portion standing, "[b]ecause a factual inquiry is required in order to determine whether a particular eviction notice is privileged").

In *Action*, Chief Justice George wrote for the majority, with three concurrences, and Justices Corrigan and Werdegar dissented. *Action* held that a landlord may not be *precluded* (enjoined) from *filing* a UD Complaint based on a local ordinance, but of course a UD proceeding may be stayed on proper grounds. CAA claims *Action* "prohibits a tenant from bringing a separate wrongful eviction lawsuit based on" a landlord's wrongful UD, but I did not find that holding in *Action*, merely that "part" of the enjoining

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Santa Monica ordinance, or its punitive criminal penalties, may not be founded on the mere act of landlord filing a UD. This does not affect a later wrongful eviction action.

Castaneda v. Olsher (2007) 41 Cal.4th 1205 (deciding in favor of a landlord-*defendant*, sued by a tenant on the basis that the landlord should have taken more steps to reduce the risk of death or injurty related to gang violence). In *Castaneda*, the proper full statement of the Court's holding is that there *is* a duty on landlord, but that such duty is only breached when the "residential tenant's behavior and known criminal associations … create such a high level of forseeable danger to others that the landlord is obliged to take measures to remove the tenant from the premises or bear a portion of the legal responsibility for injuries the tenant subsequently causes".

Cook v. City of Buena Park (2005) 126 Cal.App. 4th 1 (procedural due process case in which Court held landlords cannot be required to evict on P.D. information of drug/gang activity-similar to Castaneda, not at issue in this case).

Feldman v. 1100 Park Lane Associates (2008) 160 Cal.App.4th 1467, 1491, 94 (the anti-SLAPP statute applies to tenant suits against landlords, but tenant may prevail in the special motion to strike proceeding by providing likelihood of prevailing on merits; here, ultimately Petitioner and the other 11 Docktown evictees shall have viable wrongful eviction claims, not subject to the anti-SLAPP special motion, because an entity without capacity does not hold the litigation privilege if it has no jurisdiction over the premises).

Greene v. Municipal Court (1975) 51 Cal.App.3d 446 (a foundation and logical underpinning for *Delta*) which indeed supports the *Delta Imports*' holding).

Greene held, at *supra* 451:

> "Service of a substantially defective summons does not confer jurisdiction over a party. (CCP Sec. 412.20). Here the summons was fatally defective. A summons must contain a direction that the defendant file a responsive pleading within 30 days unless some specific statute modifies the time for response. (*Id.*) Plaintiff purported to utilize CCP Sec. 1167, applicable to actions in [UD], to secure a summons calling for response within five days. The Sec. 1167 summons is inappropriate in the cast at bench because the complaint, if it states a cause of action at all, states it on a theory other than [UD]."

Moreover, *Greene* also held, "The statutory situations in which the remedy of unlawful detainer is available are exclusive, and the statutory procedure must be strictly followed." *Id.* at 450 (*citing* Witkin, Pleading, pin-cite omitted). The *Greene* plaintiff-landlord did allege UD, but on inquiry (whether by MTQ or Demurrer, or otherwise) the absence of a landlord-tenant relationship may be a basis for linking subject matter jurisdiction to personal jurisdiction. This is the reason why Greene "does" support Delta – when this fundamental element of the cause of action is missing, so are both subject AND personal jurisdiction, when the action has been filed and Summoned as a 5-day UD.

Ironically Petitioner's lack of capacity-jurisdiction argument that shall be asserted in Answer, and at trial on remand, also establishes the same lack of landlord-tenant relationship as *Greene*; although Real Party is trying to make it the basis for decision of this Writ proceeding by its Briefs and RJN, the underlying facial, fatal defect is the failure to have pleaded venue location and branch at all, establishing noncompliance with the mandatory, statutory heightened venue pleading requirements.

Petitioner may also demur on remand on the capacity and jurisdiction issues, resulting in dismissal without leave to amend, or at least a ruling that it is a blended issue of fact and law for the jury and bench at trial. But *Greene* supports it.

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Roy v. Superior Court of San Bernardino County (2005) 127 Cal.App.4th 337 (quite simply held that when a defendant answers he or she waives personal jurisdiction grounds for bringing a MTQ, as he or she has made a general appearance). This seems obvious, but for some reason at the time the amendment to CCP Sec. 418.10 included MTS and Demurrer but not Answer. It is not germane to this case.

Saberi v. Bahktiari (1985) 169 Cal.App.3d 509, 517 (an extraneous mistake that is neither an element of the UD cause or action, nor a facial, fatal defect does not present a fatal jurisdictional error). The court held, "We do not deem that the *inclusion* of an improper request for pretermination rent [in addition to other, proper remedies] rendered the entire complaint invalid or made the summons subject to a successful motion to quash service." *Id.* However, it's not on point, because *exclusion* of either a necessary element of the cause of action, or another facial, fatal *exclusion* such as the heightened venue provision in our case, *does* render the Complaint and Summons subject to attack.

If the UD Complaint at issue had included only the erroneous remedy and excluded pleading respecting the proper remedy(ies), then it *would* have been subject to attack on MTQ, MTS or Demurrer, at UD defendant's election.

Sabi v. Sterling (2010) 183 Cal.App.4th 916 (Section 8 case, not applicable).

VI. Opposition to, and/or, in the Alternative, Application / Motion to Strike Dowling Dec.

Petitioner opposes the filing of the Dowling Dec., on the authorities in this Section. In the alternative, Petitioner moves to strike the Dowling Dec., by this Applica-

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tion for Order (Motion) Striking the Dowling Dec. To Petitioner's reading, the Dowling Dec. assumes it may attach briefs and an unpublished opinion, in unrelated cases for which review has neither been granted, nor have they been briefed in this statutory Writ.

Specifically, Exhibit C is not a published opinion and is expressly forbidden by CRC 8.1115(a). See n[2] below for text of CRC 8.1115(a), (b). Exhibit C must be stricken.

In addition, the cherry-picked briefs from the case and the calendar showing the entry of the order, must all be stricken. As to these MPAs/briefs, the Declaration does not appear to be a properly-styled Request for Judicial Notice ("**RJN**"), nor does it appear to qualify for RJN under the applicable code sections and rules even if it were.

It is simply a Declaration of counsel for CAA, which Dec. does not state the statutory or other basis on which it may make the Declaration and file it with the Amicus Application. It should not be received, filed and considered, and it should be stricken.

VII.
Conclusion

In conclusion, Petitioner respectfully requests that this Court discount the arguments in CAA's Brief, as they either focus on a UD Plaintiff Landlord's own appeal on an issue of such merit it cannot reasonably be disputed (*Danger Panda*), or they focus

[2] **Rule 8.1115. Citation of opinions**

(a) Unpublished opinion Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

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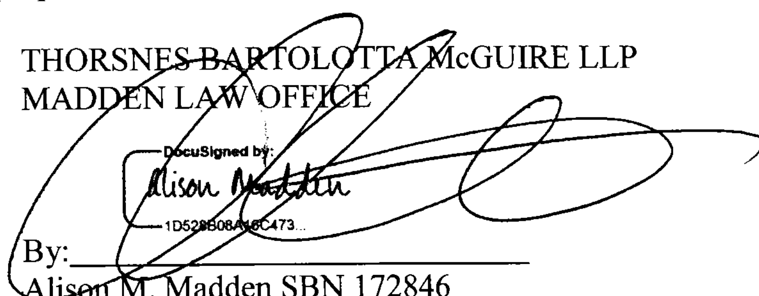
on legislation and cases that either were not passed (bills) or are off-point and address specific, or niche, situations (anti-SLAPP, gang and drug activity, and the like). CAA has offered not a single fresh nor compelling position why *Delta* was wrongly decided, and rather argues that *Delta* motions are interposed, and indeed defense counsel generally interpose them, solely or primarily or inherently for "dilatory" or "woefully dilatory" purposes, "for delay", and even that [defense counsel] unethically make false claims …." This issue is more important than to be summarily rejected through accusations and inflammatory statements that are not supported by objective evidence.

Petitioner also respectfully requests that this Court rule in favor of Petitioner on its Opposition to Filing the Dowling Dec., or, in the Alternative, its herein Application /Motion Strike the Dowling Dec., as improper and without sufficient foundation.

THORSNES BARTOLOTTA McGUIRE LLP
MADDEN LAW OFFICE



Dated: May 31, 2019

By:__________________________
Alison M. Madden SBN 172846

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

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PROOF OF SERVICE

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

On June 4, 2019*, I served a copy on counsel below** of the following document(s):
****Note***: an identical copy was also e-submitted Friday May 31, 2019 w/paper copies brought to the Court on Monday and Tuesday June 3 and 4, 2019.

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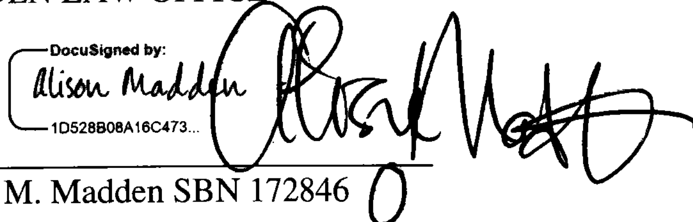
By placing a true copy enclosed in a sealed envelope w/postage prepaid in the U.S mail, from Redwood City CA (which includes Emerald Hills/Woodside (unincorporated) post offices)*:

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

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

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

THORSNES BARTOLOTTA McGUIRE LLP
MADDEN LAW OFFICE



Dated: June 4, 2019

By:______________________
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