

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/04/14

DEPT. 12

HONORABLE BARBARA A. MEIERS

JUDGE

B. BAKER

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E AVENA, C.A.

Deputy Sheriff

NONE

Reporter

BS142768

Plaintiff
Counsel

CITIZENS FOR ENFORCEMENT OF

NO APPEARANCE

VS

Defendant
Counsel

VS

CITY OF PALOS VERDES ESTATES ET
170.6 JUDGE RUTH KWAN (PLAINTI

NATURE OF PROCEEDINGS:

RULING ON DEMURRER AND MOTION TO STRIKE

A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . CCP 1085a. [M]andamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Generally, mandamus may only be employed to compel the performance of a duty that is purely ministerial in character. Morris v. Harper(2001) 94 Cal.App.4th 52. Mandate will not issue if the duty is not plain or is mixed mixed with discretionary power or the exercise of judgment. Los Angeles County Prof. Peace Officers' Assn. v. County of Los Angeles (2004) 115 Cal.App.4th 866, 869. Even if mandatory language appears in the statute creating a duty, the duty is discretionary if the [entity] must exercise significant discretion to perform the duty.

In the present case, the mandamus action asked the court to order that the "Association ...enforce its reversionary rights to Area A," and, for a peremptory writ of mandate directing the City and Association to "enforce the land use restrictions and use all legal means to remove the illegal improvements...." This is unlike a request to have

<p align="center">MINUTES ENTERED 11/04/14 COUNTY CLERK</p>

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NATURE OF PROCEEDINGS:

a body ordered to "cross a T" or "issue the permit," which are purely ministerial acts. At best, it was a Petition for Mandate to act in an area where ministerial duties or acts are "mixed with discretionary power or the exercise of judgment." What is being called for, for example, in connection with the Association "enforcing its reversionary right?" Is it to file suit to revoke its own deed or just give notice to the transferees and then record some sort of document? And just what is it the City is to be compelled to do to "enforce the land use restrictions, etc.? It is undoubtably for this reason that Mandamus was denied.

The court has engaged in this inquiry (since neither side briefed these matters) in response to the defense position that the Mandamus ruling has somehow created "the law of the case," preventing this court from allowing the rest of the action to continue. This court, however, disagrees, finding that the resolution of the question of whether or not the relief requested was purely ministerial (which is all that the denial of Mandate determined) does not affect this court's ability to proceed with the issues now pending before the court which this court finds involves more than issues of "ministerial duty."

The pending City's demurrer is overruled with defendants to file an Answer within 20 days and defendants' Motion to Strike is denied.

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NATURE OF PROCEEDINGS:

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the
COURT RULING

upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in LOS ANGELES, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 11/5/14

Sherri R. Carter, Executive Officer/Clerk

By: _____

BETTINA M BAKER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

*****SEE CERTIFICATE OF MAILING*****

MINUTES ENTERED
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COUNTY CLERK

C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS

VS.

CITY OF PA

BS142768

Broedlow Lewis LLP

Attorney for Plaintiff/Petitioner

734 Silver Spur Road, Suite 300
Rolling Hills Estate CA 90274

Tao, Terry T., Esq.

Attorney for Respondent

Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703 9364

SCOTT J. SACHS

Attorney for Deft/Respnt

ATKINSON, ANDELSON, ET AL
12800 CENTER COURT DR., #300
CERRITOS CA 90703

SIDNEY F. CROFT, ESQ.,

Attorney for Deft/Respnt

314 TEJON PLACE
PALOS VERDES ESTATES CA 90274

DANIEL V. HYDE

Attorney for Deft/Respnt

LEWIS BRISBOIS, ET AL
221 N. FIGUEROA ST., #1200
LOS ANGELES, CA 90012

C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS

VS.

CITY OF PA

BS142768

R.J. COMER

Attorney for Deft/Respnt
ARMBRUSTER, GOLDSMITH, ET AL
1161 SAN VICENTE BLVD., #900
LOS ANGELES, CA 90049

GREGG KOVACEVICH

Attorney for Deft/Respnt
JENKINS & HOGIN
1230 ROSECRANS AVE., #110
MANHATTAN BEACH CA 90266

Hyde, Daniel V., Esq.

Attorney for Respondent
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, CA 90012 2601

Dveirin, Brant H., Esq.

Attorney for Defendant/Respondent
Best Best & Krieger LLP
300 South Grand Avenue, 25th Floor
Los Angeles, CA 90071

Hogin, Christi

Attorney for Defendant/Respondent
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach CA 90266