

JUN 30 2011

John A. Clarke, Executive Officer/Clerk

By B. Vargas, Deputy

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Attorney General of California
CHRISTINA BULL ARNDT
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*Attorneys for Defendants
California Coastal Commission and State Coastal
Conservancy*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

WEST DISTRICT

COUNTY OF LOS ANGELES

DONAHUE L. WILDMAN,
Plaintiff,

vs.

CALIFORNIA COASTAL COMMISSION
AND STATE COASTAL CONSERVANCY,
Defendants.

Case No. SC111748

**NOTICE OF RULING SUSTAINING
DEMURRER WITH LEAVE TO AMEND**

Date: June 20, 2011
Time: 8:30 a.m.
Dept: I
Judge: Hon. Jacqueline A. Connor

Action Filed: March 7, 2011

1 The demurrer by defendants California Coastal Commission and the State Coastal
2 Conservancy to the verified complaint for quiet title and declaratory relief filed by plaintiff
3 Donahue L. Wildman in the above matter came on regularly for hearing on June 20, 2011, at 8:30
4 a.m. in Department I, the Honorable Jacqueline A. Connor presiding. Defendants appeared by
5 their attorney, Kamala D. Harris, Attorney General, by Rosana Miramontes, Deputy Attorney
6 General. Plaintiff appeared by his attorney, Burt Senkfor. The court, after receiving and
7 considering the complaint, the briefs, and arguments presented by the parties, issued its ruling
8 sustaining defendants' demurrer with 20 days leave to amend if plaintiff can correct the
9 deficiencies set forth in the court's minute order (attached hereto as Exhibit A).

10 The court also advanced the Case Management Conference from August 31, 2011 and held
11 it on June 20, 2011. The Court referred the case to mediation, which is to be completed by
12 October 18, 2011.

13 The court set a post-mediation Status Conference/Trial Setting Conference on October 25,
14 2011 at 8:30 a.m. in Department I.

15
16 Dated: June 29, 2011

Respectfully submitted,

17 KAMALA D. HARRIS
18 Attorney General of California
19 CHRISTINA BULL ARNDT
Supervising Deputy Attorney General

20 
21 LAURIE R. PEARLMAN
22 Deputy Attorney General
23 *Attorneys for Defendants*
24 *California Coastal Commission and State*
25 *Coastal Conservancy*

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/20/11

DEPT. WEI

HONORABLE JACQUELINE A. CONNOR

JUDGE

V. JAIME

DEPUTY CLERK

HONORABLE
#10

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. VARGAS

CA

Deputy Sheriff

S. MACNEIL

CSR# 9013 #

Reporter

8:30 am

SC111748

Plaintiff

Counsel

BURTON MARK SENKOR (X)

DONAHUE L. WILDMAN

VS

Defendant

ROSANA MIRAMONTES (X)

CALIFORNIA COASTAL COMMISSION E

Counsel

AL.

NATURE OF PROCEEDINGS:

DEFENDANT'S (CALIFORNIA COASTAL COMMISSION AND STATE COASTAL CONSERVANCY) DEMURRER TO COMPLAINT;

Matter is called for hearing.

Counsels acknowledge receipt of the Courts' tentative ruling, defendant submits on the tentative ruling and the matter is argued.

The Court adopts Its' tentative ruling as the final order of the Court as follows:

The demurrer of defendant California Coastal Commission and State Coastal Conservancy to the complaint is SUSTAINED with 20 days leave to amend if the deficiencies set forth below can be corrected. Defense counsel to give notice.

Since there is no statute of limitations governing quiet title actions, it is ordinarily necessary to refer to the underlying theory of relief to determine which statute applies. Where the plaintiff remains in possession of the property, the dormant adverse claim does not trigger the statute of limitations. (Smith v. Matthews (1889) 81 Cal. 120, 121; McNulty v. Copp (1949) 91 Cal.App.2d 484, 493.)

In many instances one in possession would not know of dormant adverse claims of persons not in possession. Moreover, even if the party in

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possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him. Of course, the party in possession runs the risk that the doctrine of laches will bar his action to quiet title if his delay in bringing action has prejudiced the claimant. ([citations omitted].)

The "possession" required to toll the statute of limitations must be "exclusive and undisputed." Although *Muktarian v. Barmby* (1965) 63 Cal.2d 558 does not explicitly refer to "exclusive and undisputed possession," that type of possession was in fact present there and in the cases relied upon in it. (*Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 616.) In *Smith supra*, a mistake in a deed purported to convey more land to plaintiffs than was intended, but the deed holder never took possession of the land at issue, which remained in plaintiffs' "actual" possession. The statute of limitations for plaintiffs' quiet title action, filed many years later, was tolled during the time plaintiffs were in "actual possession" of the land. (*Smith v. Matthews, supra*, 81 Cal. at 121.) When an adverse claimant asserts his or her claim sufficiently to bring it to the attention of the plaintiff (*Crestmar Owners Ass'n v. Stapakis, supra*, 157 Cal.App.4th 1223), the plaintiff must file a quiet title action within five years of the assertion of the adverse claim (CCP sections 318,

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319, 320, 321) or within three years, depending upon the nature of the adverse claim (CCP section 338).

Plaintiff here has failed to demonstrate that he had "exclusive and undisputed" possession of the property at issue once the COMMISSION recorded its Certificate of Acceptance of the Irrevocable Offer to Dedicate on December 23, 2003. There is nothing to show that plaintiff was unaware of the Certificate of Acceptance and the recording provided constructive notice pursuant to Civil Code section 1213. Once the Certificate of Acceptance was recorded, the adverse claim was asserted and the five-year statute began to run. Five years ran on December 23, 2008 and this action was not filed until more than two years later. If plaintiff cannot allege sufficient facts to demonstrate that his claims are not time-barred, his claims will be barred. Plaintiff has not requested leave to amend if the demurrer was well taken and no additional facts are set forth in plaintiff's opposition.

It is not up to the Court to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349; Hendy v. Losse (1991) 54 Cal.3d 723, 742.)

Plaintiff cites no authority to show that the

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COMMISSION's acceptance of the Irrevocable Offer to Dedicate is no more than a "cloud" on title. A dedication is a voluntary transfer of an interest in land and resembles both a grant and a gift. It is therefore governed by the fundamental principles which control such transactions. (County of Inyo v. Given (1920) 183 Cal. 415, 418.) A dedication involves loss of private property for public use without compensation. (Cal. Water & Tel. Co. v. Public Util. Com. (1959) 51 Cal.2d 478, 494.)

Finally, as to the COMMISSION's laches argument, where the action seeks equitable relief alone, the defense of laches may be a bar to a judgment for the plaintiff and a general demurrer will lie. The rule is declared in the leading case of Kleinclaus v. Dutard (1905) 147 Cal. 245 as follows: "It therefore devolves on one seeking the aid of a court of equity in a case of this character, where the complaint shows great lapse of time without the assertion of any claim, and long-continued acquiescence in acts hostile to the claim, to allege in his complaint the circumstances showing good faith and reasonable diligence on his part." (Id., at p. 250.)

Laches consists of unreasonable delay that results in some prejudice to the defendant; delay alone, apart from the statute of limitations, is not a bar. If the complaint merely discloses the lapse of a long period of time without affirmatively showing or necessarily implying injury to the defendant, it

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does not show laches on its face, and a demurrer should not be sustained. Prejudice may then be pleaded in the answer and the issue will be determined at the trial. Zakaessian v. Zakaessian (1945) 70 Cal.App.2d 721. Here, the Court finds that there is nothing on the face of the complaint or in the demurrer demonstrating what prejudice has been suffered by the COMMISSION.

Case Management Conference set for AUGUST 31, 2011 is advanced to this date and held.

The case is referred to Mediation and Mediation is to be completed by OCTOBER 18, 2011.

Post Mediation Status Conference/Trial Setting Conference are set for OCTOBER 25, 2011 at 8:30 a.m. in Department WE"I".

Counsel for Defendant is ordered to give notice.

MINUTES ENTERED 06/20/11 COUNTY CLERK

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: Wildman v. California Coastal Commission, et al.
No.: SC 111748

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 29, 2011, I served the attached **NOTICE OF RULING SUSTAINING DEMURRER WITH LEAVE TO AMEND** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

HERBERT DODELL
The Dodell Law Corporation
12121 Wilshire Blvd., Suite 600
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Tel: 310-824-1515
Fax: 310-824-7575
Attorney for Plaintiff Donahue Wildman

BURTON MARK SENKFOR
Law Office of Burton Mark Senkfor
9100 Wilshire Blvd., Suite 715 E
Beverly Hills, CA 90212-3415
Tel: 310-274-4100
Fax: 310-273-7635
Attorney for Plaintiff Donahue Wildman

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 29, 2011, at Los Angeles, California.

Monique Huynh
Declarant

Monique Huynh
Signature