

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF PLACER

JUN 19 2007

JOHN MENDES  
EXECUTIVE OFFICER & CLERK  
By M. Baxley, Deputy



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

MEADOW VISTA PROTECTION

Petitioner and Plaintiff,

vs.

CHEVREUX AGGREGATES, INC., et

al.

Defendants.

Case No.: SCV 19614

Rulings on Submitted Motions

On May 22, 2007 the court heard the arguments of the parties with respect to plaintiff's motion for summary adjudication of the third cause of action, and as to defendant Chevreux's motion for judgment on the pleadings as to the second, third and fourth causes of action. Attorneys Tim Kassouni and Angela Thompson appeared on behalf of plaintiff and petitioner Meadow Vista Protection. Attorney Brigit S. Barnes appeared on behalf of defendant and respondent Chevreux Aggregates, Inc. The court invited counsel to submit additional briefs concerning defendant's request for judicial notice of the "Planning Director's Determination Regarding Status of LDA-786." The matters were submitted for decision on May 29, 2007. The

1 court has considered all of the moving and opposing papers, and the  
2 arguments of counsel, and rules on the motions as follows:

3 1. Motion For Judgment on the Pleadings

4 Defendant's motion for judgment on the pleadings is denied. The only  
5 "new" law defendant cites in support of its motion is *Calvert v. County of*  
6 *Yuba (2006) 145 CA4th 613*, which held that there is no private right of  
7 action to enforce SMARA. However, plaintiff is not seeking to enforce  
8 SMARA, and therefore *Calvert* is inapplicable. Specifically, plaintiff is not  
9 seeking a determination that defendant does not have either a permit or  
10 vested right under SMARA, does not have a reclamation plan, and has not  
11 provided financial assurances to implement the planned reclamation.  
12 Plaintiff is instead seeking a determination that defendant's quarry and  
13 asphalt operations exceed the terms of their conditional use permits, and/or,  
14 in the case of the asphalt operation, the conditional use permit has lapsed.  
15 As defendant has therefore failed to show a material change in law since the  
16 court's ruling on defendant's demurrer, this motion must be denied.

17 Defendant's request for judicial notice is granted as to items 1, 2, 3, 4,  
18 5, 6 and 7 only.

19 2. Plaintiff's Motion for Summary Adjudication

20 Plaintiff's motion for summary adjudication is denied.  
21 Plaintiff seeks summary adjudication of the third cause of action, concerning  
22 whether defendant's conditional use permit to operate an asphalt plant on its  
23 property lapsed under Placer County's lapse ordinance. There are triable  
24 issues of material fact as to whether the intermittent operation of the  
25 asphalt plant on Defendant's site constitutes a lapse under the Placer County  
26 lapse ordinance. (See SSDUMF 11, 19, 25, 26, 27, 28, 31, and 32.) "For  
27 practical purposes, an issue of *material* fact is one which, in the context and  
28 circumstances of the case, warrants the time and cost of fact-finding by

1 trial.' [Citation.] In other words, not every issue of fact is worth submission  
2 to a jury. The purpose of summary judgment is to separate those cases in  
3 which there are *material* issues of fact meriting a trial from those in which  
4 there are no such issues." (*Eisenberg v. Alameda Newspapers, Inc. (1999)*  
5 *74 Cal.App.4th 1359, 1376.*) A plaintiff moving for summary adjudication  
6 bears the burden that each element of the cause of action has been proved,  
7 hence that there is no defense thereto. (*Code of Civil Procedure section*  
8 *437c(p)(1).*) Plaintiff has not met that burden here. Even in the absence of  
9 the of the Planning Director's determination, plaintiff cannot prevail on this  
10 motion.


11 The court takes judicial notice of items 1-5, 29 as to the agreement  
12 only, 30-34, 36-38, 42-44, 46, 47, 49, 50, 52-54, 57, 61-63, 68-71, 73, 75-  
13 77, 79, 81, 82, 85, 88, 90, 92, 95, 96, 98-100, 102-109, 116, 121, and 123  
14 in Defendant's request for judicial notice. The court declines to take judicial  
15 notice of the remaining items.

16 Defendant's objections to plaintiff's evidence are sustained. Plaintiff's  
17 objections 1(M), 1(O), and 4(C) are sustained. Plaintiff's remaining  
18 objections are overruled.

19 Request for Judicial Notice

20 After the subject motions were filed, the court was requested to take  
21 judicial notice of the May 18, 2007 written determination of the Placer  
22 County Planning Director that Chevreaux's asphalt operation is currently a  
23 legally permitted use, which has not lapsed. Given that this written  
24 determination was not filed in timely fashion in connection with the moving  
25 and/or opposing papers, the court declines to take judicial notice.

26 Dated: 6/19/07

27   
28 Hon. Charles D. Wachob  
Judge of the Superior Court

1 Case No. SCV 19614

Title of Case: Meadow Vista vs. Chevreaux

2  
3 **Proof of Service**

4 I am employed by the County of Placer, State of California. I am over the age of 18 years  
5 and not a party to the within above entitled action. My business address is PLACER COUNTY  
6 SUPERIOR COURT, 101 Maple Street, Auburn, California 95603. On this date, I served the  
7 within:

8 **Rulings on Submitted Motions**

9 On the parties below named in said action by placing a true copy thereof for collection and  
10 mailing so as to cause it to be mailed on the date stated below, following standard court practices, in  
11 sealed envelopes addressed as follows:

12 (X) Copy mailed to below listed address.                      () Copy via FAX.

13 Angela Thompson  
14 Tim Kassouni  
15 The Zumbrun Law Firm  
16 3800 Watt Avenue, Suite 101  
17 Sacramento, CA 95821

18 Brigit S. Barnes & Associates, Inc.  
19 Brigit S. Barnes  
20 3262 Penryn Road, Suite 200  
21 Loomis, CA 95650

22 I am readily familiar with the County's practice of collection and processing correspondence  
23 for mailing. Under the practice it would be deposited with the U.S. Postal Service and/or inter  
24 office mail on that same day with postage thereon fully prepaid in the ordinary course of business.

25 I declare under penalty of perjury, under the laws of the State of California, that the  
foregoing is true and correct. Executed on 06-19-2007 Auburn, California.

JOHN MENDES, CLERK OF THE COURT

By:   
\_\_\_\_\_  
Marcia Baxley, Deputy Court Clerk