

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

OCT 16 2006

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

MEADOW VISTA PROTECTION,
Petitioners and Plaintiffs,
vs.
CHEVREAUX AGGREGATES, INC., et
al.,
Respondents and Defendants.

Case No.: SCV 19614
**RULING ON SUBMITTED
MATTER**

On October 6, 2006 the court issued a tentative ruling on the demurrers of respondents/defendants Chevreaux Aggregates, Inc., County of Placer and County of Placer Planning Department. No hearing was requested by respondents/defendants County of Placer and County of Placer Planning Department. Accordingly, the court adopts its tentative ruling as its final ruling on those demurrers, with the exception of extending the date for leave to amend, as set forth below. Defendant/respondent Chevreaux Aggregates, Inc. ("Chreveaux") requested a hearing as to the court's tentative ruling on its demurrer. The matter was heard on October 10, 2006. Timothy Kassouni, Esq. and Angela Thompson, Esq. of the Zumbrun Law Firm appeared on behalf of petitioner/plaintiff Meadow Vista Protection.

1 Brigit S. Barnes, Esq. appeared on behalf of Chevreaux. The matter was
2 argued and the parties were permitted to file supplemental memoranda of
3 points and authorities. The court, having considered all of the moving and
4 opposing papers and the arguments of counsel, rules as follows on the
5 matters submitted:

6 Demurrers of County and Planning Department.

7 The demurrer of respondents/defendants County of Placer and County
8 of Placer Planning Department to the first cause of action for mandamus in
9 the complaint is sustained. Petitioner has failed to set forth a mandatory or
10 ministerial duty of the defendants. Section 17.60.020 describes the general
11 authority of the planning director and no mandatory duties are set forth in
12 that provision. Section 17.62.170 provides that the code enforcement
13 officer "may" initiate proceedings. This is clearly a discretionary duty. In an
14 abundance of caution, and exercising liberality with respect to allowing
15 petitioner to amend, the court will grant petitioner leave to amend. Any
16 amended petition shall be served and filed by October 26, 2006.

17 Demurrer of Chevreaux.

18 With respect to the demurrer of defendant Chevreaux to the second
19 and third causes of action for declaratory relief, an actual, justiciable
20 controversy has been alleged as between the parties. After the hearing, the
21 parties submitted supplemental memoranda regarding the applicability of
22 *Pinnacle Holdings, Inc. v. Simon (1995) 31 CA4th 1430* and related matters.
23 In that case, Pinnacle, the owner of a mobile home park, brought an action
24 after the defendant city's rent review board failed to grant a discretionary
25 rent increase. Essentially, Pinnacle sought mandamus relief compelling the
26 respondent rent review board to grant its request for a rent increase at the
27 mobile home park. In addition to suing the city and the rent review board,
28 Pinnacle joined four tenants of the park as defendants as a result of their

1 efforts in opposing the rent increase at the administrative hearing. The
2 court properly sustained the tenants' demurrers, without leave to amend,
3 because the relief requested by the owner could be granted without the
4 participation of the tenants. (*Pinnacle Holdings, Inc., supra, at 1436.*) In
5 other words, the tenants, who were not members of the rent review board,
6 had no ability to grant the essential relief sought by Pinnacle - to overturn
7 the administrative decision of the board. In this case, the prayers to the the
8 second and third causes of action, relating to Chevreaux's quarry and
9 asphalt operations, respectively, make clear that petitioners/plaintiffs do not
10 seek to invalidate the County's issuance of the subject permits. Rather, in
11 essence, petitioners/plaintiffs seek a declaration that Chevreaux's various
12 activities are not in compliance with the valid permits issued long ago.
13 Whether such relief is warranted can be determined without the participation
14 of the County as a party.

15 As to the causes of action for injunctive relief, plaintiff need not submit
16 affidavits at the time the complaint was filed. The complaint was verified
17 and sets forth sufficient facts to support the request for injunctive relief. For
18 the purposes of demurrer, the court must accept the allegations as true.
19 Defendant's demurrer to these causes of action is overruled.

20 Defendant Chevreaux's demurrer to the fifth cause of action for public
21 nuisance is overruled. By definition a public nuisance is one that affects at
22 the same time an entire community or neighborhood, or any considerable
23 number of persons, although the extent of the annoyance or damage
24 inflicted upon individuals may be unequal. (*Civil Code section 3480.*) In
25 this case, the complaint alleges plaintiff is a California nonprofit corporation
26 (paragraph 10) and that defendant's blasting activities at its quarry cause
27 noise and vibrations "on and near the property of nearby residents, including
28 members of MVP" (paragraph 54). It is alleged defendant's various activities

1 interfere with the comfortable enjoyment and use of MVP member's property
2 (paragraph 54). Accordingly, the cause of action has been pled sufficiently.
3 Further, by extension, the holding of *Residents of Beverly Glen v. City of Los*
4 *Angeles (1973) 34 CA3d 117* supports plaintiff's claim that it has standing to
5 sue to abate a nuisance alleged to be public in nature.

6 As to the sixth cause of action for private nuisance, defendant
7 Chevraux's demurrer is sustained, with leave to amend. The essence of a
8 private nuisance is its interference with the use and enjoyment of land.
9 Unlike public nuisance, which is an interference with the rights of the
10 community at large, private nuisance is a civil wrong based on disturbance
11 of rights in land. (*Venuto v. Owens-Corning Fiberglas Corp. (1971) 22 CA3d*
12 *116, 124.*) A nuisance may be both public and private, but to proceed on a
13 private nuisance theory the plaintiff must prove an injury specifically
14 referable to the use and enjoyment of his or her land. The injury, however,
15 need not be different in kind from that suffered by the general public. (*Koll-*
16 *Irvine Center Property Owners Assn. v. County of Orange (1994) 24 CA4th*
17 *1036, 1041.*) A plaintiff suing on this theory must allege and prove
18 interference with a property interest. (*Lew v. Super.Ct. (Byrd) (1993) 20*
19 *CA4th 866, 873; Oliver v. AT & T Wireless Services (1999) 76 CA4th 521,*
20 *533-534.*) In a claim for private nuisance, a plaintiff typically must
21 establish, among other elements, that it owns, leases, occupies or controls
22 real property. (*CACI 2021.*) In this case, the plaintiff nonprofit corporation
23 MVP does not allege interference with any property interest of its own.

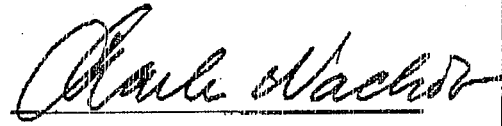
24 As to the cause of action for trespass, the demurrer of defendant
25 Chevraux is sustained, with leave to amend. The cause of action for
26 trespass is designed to protect possessory interests in land from unlawful
27 interference. "An action for trespass may technically be maintained only by
28 one whose right to possession has been violated; however, an out-of-

1 possession property owner may recover for an injury to the land by a
 2 trespasser which damages the ownership interest." (*Smith v. Cap Concrete,*
 3 *Inc. (1982) 133 CA3d 769, 774.*) The proper plaintiff in an action for
 4 trespass to real property is the person in actual possession; no averment or
 5 showing of title is necessary. (*Smith v. Cap Concrete, Inc., supra, 133 CA3d*
 6 *at 775.*) Just as with its cause of action for private nuisance, plaintiff non-
 7 profit corporation MVP has not alleged unlawful interference with any
 8 possessory interest of its own so as to support a cause of action for private
 9 nuisance. Instead, plaintiff MVP alleges that it is its members, who are
 10 "nearby residents" at unspecified properties, whose possessory rights have
 11 suffered.

12 As to the sixth and seventh causes of action for private nuisance and
 13 trespass, respectively, plaintiff is granted leave to amend.

14 Any amended complaint shall be filed and served on or before October
 15 26, 2006.

16
 17 Dated: 10/16/06



Hon. Charles D. Wachob
 Judge of the Superior Court

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1 Case No. SCV 19614

Title of Case: Meadow Vista Protection vs. Chevreaux

2 **Proof of Service**

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

7 ***Ruling on Submitted Matter***

8
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. (X) Copy via FAX.

<p>13 The Zumbrun Law Firm 14 Angela Thompson 15 Timothy Kassouni 16 3800 Watt Avenue, Suite 101 17 Sacramento, CA 95821 18 Facsimile: 916-486-5959</p>	<p>Brigit S. Barnes & Associates, Inc. Brigit S. Barnes 3262 Penryn Road, Suite 200 Loomis, CA 95650 Facsimile: 916-660-9554</p>
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19 I am readily familiar with the County's practice of collection and processing correspondence
20 for mailing. Under the practice it would be deposited with the U.S. Postal Service and/or inter
21 office mail on that same day with postage thereon fully prepaid in the ordinary course of business.

22 I declare under penalty of perjury, under the laws of the State of California, that the
23 foregoing is true and correct. Executed on 10/16/06 Auburn, California.

24 JOHN MENDES, CLERK OF THE COURT

25 By: M. Baxley
26 Marcia Baxley, Deputy Court Clerk
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