

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

MEADOW VISTA PROTECTION,)
)
Petitioners and Plaintiffs,))
)
v.) No. SCV 19614
)
CHEVREAUX AGGREGATES,)
INC.; COUNTY OF PLACER;)
COUNTY OF PLACER PLANNING)
DEPARTMENT; and DOES 1-50,)
inclusive,)
)
Respondents and Defendants.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held before
THE HONORABLE CHARLES WACHOB

Department 4
101 Maple Street
Auburn, California

Tuesday, October 10th, 2006
8:29 a.m.

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Reported by: TERESA KENWORTHY, CSR No. 6673



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A P P E A R A N C E S

For the Petitioners and Plaintiffs:

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1 Auburn, California, Tuesday, October 10, 2006

2 --oOo--

3 THE COURT: Meadow Vista Protection versus
4 Chevreaux.

5 MR. KASSOUNI: Tim Kassouni for plaintiff,
6 Your Honor.

7 MS. THOMPSON: Angela Thompson also for the
8 plaintiff, Your Honor.

9 MS. BARNES: Good morning, Your Honor, Brigit
10 Barnes.

11 THE COURT: Good morning, Ms. Barnes. How are
12 you?

13 MS. BARNES: Fine, Your Honor.

14 THE COURT: Good.

15 MR. KASSOUNI: Your Honor, maybe preliminarily,
16 we had requested oral argument as to the County of
17 Placer's demurrer. We've withdrawn that.

18 THE COURT: That's what I understood.

19 So, Ms. Barnes, this is your hearing.

20 MS. BARNES: Thank you, Your Honor.

21 I requested oral argument on the dec relief
22 causes of action, causes of action two and three for a
23 couple of reasons.

24 As I was reading your tentative -- and you have
25 granted the plaintiffs the opportunity to amend again

1 against the County, but assuming that eventually the
2 County is permanently out of this case, we are in a
3 position where if I understand the prayer that is
4 attached to these causes of action, there's two
5 different types of major assertions; one of which is
6 that the nature and scope of the permits that were
7 initially issued -- and I'll get back to the date in
8 just a minute -- but in some cases before me are
9 invalid. That has to do with the issue of lapse on the
10 asphalt permit, cause of action three.

11 The other interpretation of the request for
12 relief, declaratory relief are that Chevreaux improperly
13 operates outside the scope of the existing permits or is
14 in violation of those existing permits. It is my
15 contention that it is impossible to get to the merits of
16 whether or not Chevreaux is operating outside the scope
17 of those permits without the County as an essential
18 party to those elements.

19 And although I have no desire to cause trouble
20 for the County, I don't know how we get here and there.
21 And the reason I don't is that the relief that would be
22 sought eventually in trial has to do with something that
23 you have already ruled is absolutely discretionary
24 within the county's rules. And by returning to their
25 assertion in the plaintiffs' complaint, they acknowledge

1 that the County has already put on record that the
2 asphalt permit cannot lapse. So as a matter of
3 determination, an essential party to the case needs to
4 be present.

5 There is a case that was not cited to you in our
6 documents when I went over and reviewed everything over
7 the weekend and I wanted to make sure that both you and
8 the plaintiffs had it. It's called Pinnacle Holdings.
9 But in that case the reason --

10 THE COURT: Do you have a cite for that?

11 MS. BARNES: Yes, I have a copy for you, Your
12 Honor. The cite is Pinnacle Holdings 31 Cal.App.4th
13 1430.

14 THE COURT: Thank you.

15 MS. BARNES: The point that I'm stressing right
16 now is that in that case which had to do with an
17 attack on a rent control ordinance, the plaintiffs had
18 sued both the County in that case and the parties that
19 owned the properties and the Court upheld not just the
20 demurrer, but the motion to dismiss on the grounds
21 that the parties who owned properties could not affect
22 the law, could not change the regulations and
23 therefore could never provide the relief necessary.

24 If one interprets the plaintiffs' complaint as
25 presently drafted, what they are asserting is that the

1 actions that are being taken by Chevreaux, which the
2 County says according to their own complaint are okay,
3 are a violation. So I don't know how we can go forward
4 on dec relief without the County present as to that
5 aspect.

6 The second reason -- and there wasn't enough
7 attention on either side given to one of the issues that
8 has become so important in this case and that is, in my
9 opinion in any event, that the declaration of the rights
10 and duties of the parties, again, all come back to the
11 history of the permits and what occurred within the
12 confines of the permits.

13 We have operations that go back to 1947 according
14 to the complaint. We have the Pruss permit, permit 1030
15 which is the actual mining and excavation permit. And
16 they have pled on information and belief, but they are
17 asserting that Chevreaux was operating not just within
18 the physical confines of that location, but on property
19 adjacent which is not covered by that permit. And they
20 also acknowledge the County does not agree with them and
21 has never responded to them in their demands for a
22 review.

23 Chevreaux continues to operate. When you get
24 down to permit 786 and 691, the asphalt permits which
25 are dated in 1971 and '72 respectfully, they claim that

1 those have lapsed. They are on record stating in their
2 own pleading that the County has stated those can never
3 lapse.

4 There's definitely a controversy, but the issue
5 is between whom and on what issues. And I believe, Your
6 Honor, that they have already pled and you have upheld
7 for them the public business cause of action. And you
8 have given them the right to amend on their private
9 nuisance and trespass causes of action and to the extent
10 that Chevreaux were ever to be found legally liable for
11 any of those kinds of tortious causes of action either
12 to the public or to private parties along the roadway,
13 that would be the appropriate measure of relief for
14 going above the permit. But first, the nature and scope
15 of the permit has to be determined and whether or not we
16 are right that our permits are fully vested, fully
17 operational and we live within them or whether the
18 plaintiffs are right, that we have somehow violated the
19 nature and scope of it.

20 So that in a nutshell has a lot to do with why we
21 fought so hard on declaratory relief. We don't know how
22 to accurately structure a defense without the County and
23 without the proper allegations as to elements being in
24 place.

25 There's another really important issue that we

1 raised, but it was really being raised on behalf of the
2 County. We can't find a dec relief case, Your Honor,
3 dealing with a permit in which an agency, the agency
4 with jurisdiction over those permits is not named.
5 There isn't one. I searched. I did a full Lexus
6 search. Not on agencies. You can have the proper
7 parties who are back and forth on a contract or a set of
8 CC&Rs or anything, that's fine, but on agency they don't
9 exist.

10 Here, that would then mean that you have to come
11 back to something you did rule on on the county's
12 demurrer which is that there is ample evidence in the
13 zoning code that there are methods in which the parties
14 are supposed to raise their appeals and it was within
15 the County to agree or not agree.

16 There is a full appellate procedure in the zoning
17 code that the plaintiffs have not utilized in any way,
18 shape or form. And that takes us back to the argument
19 that we made in the papers on exhaustion of
20 administrative remedies. That's truly an issue for the
21 County, but it would become essential here because of
22 the timing and nature and date of these permits. That
23 also brings us the statute of limitations as a private
24 defendant.

25 THE COURT: But the allegation isn't that the

1 various permits are invalid thereby implicating the
2 exhaustion of remedies arguments. It is that the
3 permits are being exceeded by the activities of the
4 conduct of the defendant.

5 MS. BARNES: Your Honor, I think that there's
6 more than just what you are saying or maybe we are
7 just reading it differently, but when I read the
8 verified complaint, especially the prayer, that's
9 where I come back to it and see it different than how
10 you are reading it.

11 In the prayer under the second cause of action,
12 they have requested a specific determination that the
13 current output of the -- that number one, that we are in
14 violation of the existing use permit because we operate
15 outside the boundaries, that based on that we are
16 outside based on the representations by Pruss,
17 P-R-U-S-S, at the hearing on the CUP, that we are
18 outside the scope and nature of the permit.

19 The hearing they are referring to, because they
20 attached it by reference to their pleading, is a 1965
21 hearing. So if we even set aside the issue of
22 exhaustion, you come back to statutes of limitation.
23 And there's just -- and under a dec relief cause of
24 action you absorb the statutes of limitation as a matter
25 of law for the underlying pleading. I'll give you a

1 cite for that in a minute.

2 The plaintiffs have admitted that they are asking
3 for a determination of whether the 20 truck loads a day
4 are supposed to be incorporated in -- and I quote out of
5 the code book the references, but under statutes of
6 limitations for declaratory relief, the requirement is
7 that you absorb the underlying causes of action. And
8 what we have done here is if in fact in their prayer
9 they are asking to make a determination that all truck
10 loads over 20 trucks a day is a violation dating back to
11 1965 or even if as they have in their complaint on pages
12 two, lines 18 and 19 and pages five at lines nine and
13 19, they admit that what we have going on is a violation
14 of the right to operate at any time on the asphalt
15 plant.

16 When you get into those kinds of issues, you've
17 got to look at when did they know about it. And if we
18 assume that MVP is formed in 2005, they still have to go
19 under the statutes of limitation that are provided for
20 in the state law and county codes; 65009 that was cited
21 to you in the papers, their maximum statute of
22 limitations would have been 180 days from the knowledge
23 of the existing violations. And if you apply instead
24 the county's rules, they had ten days from when they
25 were denied.

1 Now, the most generous ruling comes out of their
2 own papers which was in June 2006 where they say that
3 Mike Johnson, the new planning director said that our
4 use permit would never lapse. If you start from there
5 and you allow the ten days for them to then appeal Mike
6 Johnson's decision which would be following the zoning
7 code, they've even blown it allowing them to forget all
8 of our historic rights -- that's the nature of all these
9 permits -- and treat it as a new debate beginning in
10 2005 with the formation of their group and their claim
11 that ongoing operations somehow violate. Even under
12 those standards, they missed their statutes and they
13 have blown those elements and its jurisdiction, Your
14 Honor. If they missed this under the various codes
15 that's been cited back and forth in the papers, they are
16 not allowed to proceed under those causes of action, but
17 that doesn't throw them out. Because if in fact what
18 they are really saying is: It is not that MVP believes
19 that Chevreaux doesn't have permits; we are saying that
20 Chevreaux is operating outside of the scope of the
21 permits and is injuring the public or members of the
22 public living along those roads or close by to the
23 quarry by some activity, then their causes of action
24 under tort law are still protected. But that's the
25 scope of why I have asked for --

1 THE COURT: I understand your argument.
2 Counsel.

3 MR. KASSOUNI: Well, Your Honor, she pretty
4 much hit on every issue that's been briefed. We feel
5 our briefs are pretty comprehensive, but I will
6 respond if you'd like to specific portions of her
7 argument or I can just respond generally to each point
8 she raised.

9 Is there a particular question the Court has?

10 THE COURT: I'll leave that up to you. I'm
11 pretty well familiar with the statute of limitations
12 argument. I think I just have a different take on it
13 than Ms. Barnes so far. If you want to address the
14 other points, that's fine.

15 MR. KASSOUNI: Okay. Well, let's talk about a
16 couple of her points.

17 Pinnacle Holdings, I haven't seen the case. I'm
18 not prepared to discuss it. I don't think it was
19 briefed. I don't think it was submitted on Chevreaux's
20 briefs. I'm not prepared to discuss that today.

21 If the Court's inclined to consider the case, we
22 would like an opportunity to have supplemental briefing.
23 If it is going to be germane to the Court's ruling, we
24 would request that.

25 THE COURT: Well, I don't know if it is going

1 to be germane or not either because it wasn't cited in
2 the briefs and I haven't read it, but do I intend to.
3 So therefore, I think it is fair to give you an
4 opportunity, a couple of days if you want to submit a
5 letter or additional brief just on that one case,
6 whether it pertains or not, that's fine.

7 MR. KASSOUNI: That would be fine, Your Honor.

8 The failure to join the County is a little
9 puzzling. The County is aware of the case. The County
10 could have chosen to intervene. They haven't. The
11 County really wants nothing to do with this matter which
12 is why MVP has to have the relief available that it
13 seeks in the complaints.

14 By way of analogy, and we pointed this type of
15 hypothetical out in our papers, the situation here is
16 not, again, that we are challenging the original
17 issuance of the CUP as the court rightly recognized; we
18 are seeking to enforce the conditions which has to be a
19 remedy available to the public and certainly members of
20 the public that are aggrieved and are having issue with
21 their quiet enjoyment of their property. And that
22 relates to a standing issue. There is proper standing
23 and which also relates to the proper case in controversy
24 here is that the plaintiffs as an association are
25 located within an area that they are being affected.

1 So there is a case in controversy which the Court
2 has rightly recognized, but we are not seeking to
3 invalidate the original issuance of the conditional use
4 permits. We are seeking to enforce their conditions.

5 We are in an interesting situation here because
6 if the governmental entity has absolute discretion
7 whether to enforce conditions, then there is no other
8 remedy to an aggrieved member of the public but to seek
9 legal redress on their own, which is what we are doing.
10 And if this Court were to essentially relieve the County
11 of any ongoing responsibility and further throw MVP out
12 of court in seeking private redress for violations of
13 the CUP, there is no remedy available for any violations
14 of the CUP.

15 Certainly, as a matter of public policy, that
16 can't be the result and that's why for among other
17 reasons why the declaratory relief is appropriate.

18 So the Court rightly recognizes that we are not
19 seeking to invalidate the original CUP; therefore, the
20 statute of limitations issue argument is erroneous.

21 The point about the comment that it will never
22 lapse, I don't know exactly the context in which that
23 comment was made, but it certainly wasn't part of the
24 hearing on enforcement proceedings where evidence was
25 being taken. It wasn't a statement made under oath. It

1 didn't appear to be the formal, absolute formal
2 determination of the County of Placer on the issue. In
3 fact, the County has refused to allow for hearings on
4 the enforcement issue; therefore, for that to trigger
5 some kind of statute of limitations is not a viable
6 argument.

7 Other comments, other points made, it is
8 certainly not impossible to get to the merits here
9 without the County. Chevreaux is going to take its
10 position as to whether or not it has complied with the
11 conditions of the CUP. We are going to make our
12 argument. They can file a motion for summary judgment.
13 We can do the same. The trier of fact can make the
14 determinations. So there's certainly no reason why if
15 the County has chosen not to get involved in this issue,
16 well, then the Court has to get involved and the Court
17 is well equipped to determine whether they are complying
18 or not complying with the conditions of the CUP.

19 She does actually admit in her oral argument that
20 there definitely is a controversy as to whether or not
21 the conditions of the CUP are being complied with. Case
22 in controversy is here.

23 The zoning code procedures not being used, I
24 think we briefed that fairly thoroughly, Your Honor.

25 THE COURT: I agree.

1 MR. KASSOUNI: I don't think I have anything
2 further to add to that.

3 THE COURT: Thank you.

4 MR. KASSOUNI: Statute of limitations, I think
5 that's been -- I have just mentioned it and it's also
6 been briefed.

7 Simply put and in sum, it is interesting to see
8 how -- I don't want to use the word desperately. These
9 are all good faith arguments that are being made, but it
10 is interesting to see how Chevreux does not want MVP to
11 have their day in court. And at a minimum, liberality
12 of the pleadings would entitle us to our day in court.

13 Secondly, declaratory relief is proper in the
14 discretion of the Court. And counsel says there's no
15 case we found involving declaratory relief. I believe
16 that's what her argument was. But I beg to differ on a
17 couple of points on that, Your Honor.

18 First of all, counsel for Chevreux has not cited
19 any case saying dec relief is not appropriate. Now,
20 let's assume there's no case either way. Well, the
21 Court has the discretion.

22 Secondly, that discretion will only be overturned
23 on appeal if it is a clear abuse of discretion. And
24 there's a case directly on point on that which we did
25 cite in our briefs and that would be the Bess case.

1 THE COURT: Got it.

2 MR. KASSOUNI: Clear abuse of discretion would
3 be the only standard for overturning this Court's
4 ruling on the demurrer.

5 In addition, also in the Bess case, the Court has
6 broad discretion to liquidate uncertainties and
7 controversies. And also, we need to bear in mind that
8 MVP and its members are being affected in the quiet
9 enjoyment of their property. They have proper standing.
10 There's plenty of cases that say that.

11 Lastly, interestingly enough if you read
12 Chevreaux's reply brief, they make an interesting
13 comment. There's several pages. Preliminarily, the
14 first argument out of the box deals with whether or not
15 there's an actual controversy. It's interesting here.
16 They state on page three lines 13 to 14, they state,
17 "Residents of Beverly Glen illustrates that the proper
18 means of challenging the issuance of a use permit is to
19 sue the governmental entities who issued it. The
20 plaintiff filed a petition for writ of mandate and
21 complaint for declaratory relief against the City of
22 Los Angeles to set aside a conditional use permit
23 granted by the city to U.S. Plywood Champion Papers,
24 Incorporated (real party in interest)."

25 So they are saying, Your Honor, let's look at

1 Residents of Beverly Glen for our standard on how to
2 proceed. Well, read the case, Your Honor. And I did
3 yesterday again. And that case was --

4 THE COURT: I'm very familiar with the case.

5 MR. KASSOUNI: Very good. It was brought
6 against both the County and the individual private
7 entity for dec relief and mandate was never even an
8 issue as to whether dec relief was appropriate.
9 Therefore, if we are looking at that case as a
10 standard, that case is helpful to MVP on that issue.

11 I'm prepared to go into more detail on any of
12 those topics, Your Honor.

13 THE COURT: I think I have the issues at hand.

14 Ms. Barnes, I'll give you a closing comment here
15 and then I'll provide counsel with an opportunity to
16 submit an additional brief by Friday.

17 MS. BARNES: All right. Thank you, Your Honor.

18 Let me go back over a couple of the points and
19 reply.

20 I think that MVP is misunderstanding what I'm
21 saying. I'm saying that the causes of action for
22 declaratory relief are missing an element on the
23 judiciability because an essential party who could give
24 relief will not be present. They have never named the
25 County in those causes of action.

1 THE COURT: Right.

2 MS. BARNES: And it is not that I'm saying that
3 there aren't multiple, hundreds of thousands of cases
4 in California where you sue the real party in interest
5 and the agency. I'm just saying because the agency
6 wasn't named in these causes of action and now the
7 agency is unlikely to even be around for writ of
8 mandate, you need that party in order to grant relief.
9 And that was Pinnacle Holdings.

10 THE COURT: Okay. And I promise to read the
11 case, but let's talk about that. Isn't the logical
12 extension of your argument with regard to necessary
13 party, the County, being included in this action under
14 the dec relief causes of action that any time a
15 private person or private party seeks redress for a
16 wrong in which a violation of a government standard is
17 involved that the government must be a party? I don't
18 think that's the case.

19 MS. BARNES: I don't think it would be the case
20 every time when there is no question or controversy
21 about the nature and scope of the permits.

22 So, for example, if I've got a noise ordinance
23 violation or a dog barking and I call up and ask them to
24 do something and they don't do anything and I want to
25 sue my neighbor, I can do that and not bring in the

1 County.

2 THE COURT: Right.

3 MS. BARNES: Okay. There I'm not challenging
4 the language of the permits, but the plaintiffs in
5 their prayer specifically they split it out on the
6 causes of action.

7 The second cause of action is saying that the
8 existing permit wherein we are in excess of, but the
9 third cause of action is saying that it was never
10 properly issued and it has lapsed. Well, the
11 determination of the lapse and all the issues of their
12 proper issuance of 786 falls back clearly on the County.
13 That's why I'm saying I would be suing my neighbor over
14 a dog ordinance, but I'm also saying that in the dog
15 ordinance it was never properly adopted. The neighbor
16 can't make that decision.

17 THE COURT: But tell the Court why does that
18 elevate the County to a necessary or an indispensable
19 party for that particular dispute to be litigated or
20 adjudicated? The County can just sit by the sidelines
21 if they want -- and I don't mean to say it in a
22 flippant way -- and say, fight it out. MVP, you
23 allege that these standards aren't being followed,
24 that there's dust and all these other nuisances that
25 you are alleging in the complaint. Let the trier of

1 fact find it out. If you need to call the County as a
2 witness, fine. But why does that make them per say a
3 necessary party? And I think that's the argument I'm
4 most interested in.

5 The statute of limitations I disagree with you on
6 still.

7 MS. BARNES: I know. I have to keep working on
8 you on the statute of limitations.

9 We are seeing this differently at the same time.
10 Yes, I suppose in one sense they could be sitting on the
11 side, but what I'm reading in the complaint is that
12 what's being challenged is the validity of the issuance
13 of the asphalt complaint.

14 Now, that goes all the way back to what was going
15 on in 1971. That's not just an interpretation of it.
16 We are saying that we are in excess. Because I agree
17 with you that you or another trier of fact, whoever the
18 trial judge is going to be could read the permit, can
19 read the scope of the hearings that occurred at the time
20 and render a decision in that context, but I don't
21 believe that a member -- it's a constitutional issue. I
22 don't believe that the judiciary is the appropriate
23 venue to make an initial determination on the scope and
24 nature of that permit without going through the
25 necessary processes that are allowed.

1 Now, I didn't get into the constitutional issues
2 because I thought by bringing Pinnacle in it would make
3 the point appropriately, but if you want me to include
4 that in a brief for Friday, I would do that, Your Honor.

5 THE COURT: I'll read whatever you submit. I
6 think we have the issues at hand.

7 MS. BARNES: Okay.

8 MR. KASSOUNI: Your Honor, just for the record

9 --

10 THE COURT: Hold on. Let Ms. Barnes finish.

11 MR. KASSOUNI: I'm sorry.

12 MS. BARNES: Okay. Coming back to the statute
13 of limitations for a minute here. The issue I think
14 that is the most troublesome for us besides the fact
15 obviously that unless we are talking about just
16 present today violations or violations against 2005,
17 the whole purpose of vesting statutes and everything
18 else as to the rights and operations and limit and
19 scope of the operations up there is to protect
20 preexisting operations that have gone on for a long
21 time. Many of the people who are primary witnesses
22 are dead as to the dates of those permits and
23 certainly as to the original issuance, et cetera. So
24 I think it becomes a very important issue on
25 dec relief.

1 Again, coming back to the nature and scope of the
2 permit, I don't think they have any problem at all for
3 statute of limitations as to their nuisance causes of
4 action or trespass, arguing it either permanent or and
5 continuing from just that standpoint. And I wanted to
6 make that clear because I have not said today and I have
7 not said anywhere in the pleadings that they are being
8 denied their day in court. I'm focusing just on the
9 historicity of these permits and how you can do a fair
10 job of opening them back up 45 and in some cases 55
11 years later. And that's my point --

12 THE COURT: I understand.

13 MS. BARNES: -- relative to the statute of
14 limitations.

15 THE COURT: Anything the Court must know at
16 this point or may the matter be submitted?

17 MR. KASSOUNI: I have nothing further.

18 Just for a point of procedure, as I understand it
19 both parties by Friday can submit to the Court
20 supplemental letter brief I take it just on the issue of
21 this case?

22 THE COURT: Well, I believe I gave Ms. Barnes
23 the opportunity to raise the other point that she just
24 made about constitutionality. I forget how it was
25 phrased. I don't have any objection to her bringing

1 that up. If you want to comment on that, that's fine,
2 too. Okay?

3 MR. KASSOUNI: Okay. Thank you, Your Honor.

4 MS. BARNES: Thank you.

5 THE COURT: Thank you.

6 (Time noted: 8:59 a.m.)

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State of California)
) ss.
County of Placer)

I, TERESA KENWORTHY, Certified Shorthand Reporter of the Superior Court of the State of California, for the County of Placer, do hereby certify that the foregoing pages, 1 through 24, inclusive, comprise a full, true and correct transcript of the proceedings had in the following matter:

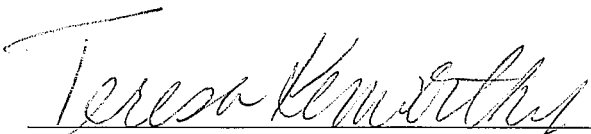
CASE: Meadow Vista Protection v. Chevreaux
Aggregates, Inc.:

No. SCV 19614

DATE: October 10, 2006

JUDGE: Hon. CHARLES WACHOB, Dept. 4

IN WITNESS WHEREOF, I have subscribed this certificate at Auburn, California this 17th day of October 2006.


TERESA KENWORTHY, CSR No. 6673
Certified Shorthand Reporter
State of California