THE ZUMBRUN LAW FIRM

A Professional Corporation

October 12, 2006

The Honorable Charles D. Wachob
Superior Court of California
County of Placer
101 Maple Street
Auburn, CA 95603

VIA FACSIMILE AND OVERNIGHT DELIVERY

Dear Judge Wachob:

RE: Meadow Vista Protection v. Chevreaux Aggregates, Inc.
Case No. SCV 19614

Per this Court's request, Meadow Vista Protection (MVP) submits this supplemental brief regarding the applicability of *Pinnacle Holdings, Inc. v. Simon* (1995) 31 Cal.App.4th 1430 (attached hereto). This case was brought to the Court's attention for the first time by defendant Chevreaux Aggregates, Inc. (Chevreaux) during oral argument on Chevreaux's demurrer on October 10, 2006.

For the following reasons, it is respectfully submitted that the *Pinnacle* case fails to support the legal arguments raised by Chevreaux in support of its demurrer to the declaratory relief causes of action.

In *Pinnacle*, the issue was whether a justiciable controversy existed between the tenants of a mobile home park and the park's owner (Pinnacle) as to the propriety of a discretionary rent increase Pinnacle had requested from the City of San Buenaventura. When the city's Rent Review Board refused the requested increase, the park owner sued the Board and four individual tenants who had publicly opposed the increase. Among other causes of action against the Board alone, Pinnacle sought declaratory relief, including "a judgment declaring that the ***Board*** acted contrary to applicable law and deprived Pinnacle of a just and fair return." (*Pinnacle Holdings, Inc. v. Simon, supra,* 31 Cal.App.4th at p. 1434, emphasis added.) Pinnacle's theory for including the four individual tenants in the declaratory relief cause of action was that they were "real parties in interest." (*Id.* at p. 1433.)

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This case is apparently being cited by Chevreaux to support two assertions it made at the demurrer hearing: (1) there is no case or controversy between *MVP* and *Chevreaux* as to the declaratory relief causes of action; and (2) the *County* is an indispensable party to the declaratory relief causes of action.
However, as explained further below, this case supports neither argument.

I. There is a present, justiciable controversy between MVP and Chevreaux as to Chevreaux's compliance with, and the continuing validity of, use permits LD-1030 and LDA-786.

In *Pinnacle*, the demurrers of the individual defendants had been sustained without leave to amend. This holding was affirmed by the appellate court because the tenants *could not grant the relief requested.* (*Pinnacle Holdings, Inc. v. Simon, supra*, 31 Cal.App.4th at p. 1434, 1437.) It was the *administrative decision* of an *administrative agency* alone which was being challenged. Pinnacle had prayed for a judgment declaring that the *Board* had acted contrary to law. Such a declaration did not require the participation of the individual defendants in any capacity. As the court observed, "the relief requested can be granted without the legal participation of any tenants." (*Id.* at p. 1436.)

This is not the case here. Unlike the situation in *Pinnacle,* MVP is not challenging any County decision or requesting any action by the County in its prayer for relief, and it is generally alleged that the County has refused to take any such action in the first instance. MVP has prayed for declaratory judgment as follows:

- LD-1030 restricts surface mining to the area(s) and parcel(s) delineated in the CUP application and Chevreaux is, and has been, mining outside of those boundaries;
- LD-1030 limits the Quarry to generating no more than 20 truckloads per day and Chevreaux consistently generates significantly more volume and truck traffic than 20 truckloads per day;
- LD-1030 imposes conditions on blasting, water quality control and dust mitigation and Chevreaux is not in compliance with these conditions;
- LDA-786 was never implemented after issuance as required by the Placer County Code and is therefore void or, in the alternative, LDA-786 has lapsed due to nonuse and pursuant to the provisions of Placer County Code;
- Chevreaux does not have any right under LDA-786 to operate an asphalt plant at the site; and
- No asphalt plant shall be permitted to operate at the site at any time in the future unless a new CUP application is filed and a new hearing held.

(MVP's Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Public Nuisance, Private Nuisance and Trespass, pp.13:25-14:15.)

The controversy between the parties is whether Chevreaux is in compliance with permit conditions and relevant zoning laws, *which are matters entirely within Chevreaux's control. Chevreaux* controls the number of trucks traveling into and out of its facility. *Chevreaux* is in control of moving the asphalt plant 1000 feet from its prior location without a new permit. *Chevreaux* controls its own compliance with blasting and dust mitigation conditions. In short, *Chevreaux* is perfectly capable of granting the relief MVP seeks—which is compliance with the applicable conditional use permits.

With regard to the allegations of non-implementation and/or lapse, while it is true that the County *could* determine these questions on an administrative level, the County has failed to do so and Chevreaux has cited no authority which mandates exclusive County jurisdiction. This Court has already determined that, based on the allegations of the operative Petition, the County's action or inaction in this case is discretionary and that MVP cannot force the County to investigate or make any formal determination regarding these issues. Therefore, due to the ongoing nature of the dispute and the failure of the County to exercise its discretion, these issues are properly—even necessarily—before this Court. Any contrary ruling would enable private industrial enterprises to ignore permit conditions without judicial oversight.

In sum, there is a present, justiciable controversy between MVP and Chevreaux which can and should be fully adjudicated through the declaratory relief causes of action.

II. The County is unnecessary to a legal determination of Chevreaux's rights and duties under permits LD-1030 and LDA-786.

Again, the *Pinnacle* opinion is unhelpful to Chevreaux. In that case, the local administrative agency was properly a party to the declaratory relief cause of action because Pinnacle was contesting an *official administrative decision.* As to the declaratory relief causes of action, MVP is not challenging the decision of the County of Placer to issue the two permits. Furthermore, MVP is not requesting any action by the County in its prayer for relief for the declaratory relief causes of action. Rather, MVP is challenging the actions of Chevreaux in failing to comply with its permit conditions and boundaries and failing to timely implement LDA-786 and/or allowing LDA-786 to lapse. The determination of these issues does not require the participation of the County, and Chevreaux has the ability to comply with an order granting the relief requested, unlike the individual defendants in *Pinnacle.*

As argued by MVP in its opposition to Chevreaux's demurrer, the County may intervene in the declaratory relief actions if it chooses to do so. Thus far, it has not. The court in *Pinnacle* observed,

> The tenants were not necessary parties because their ability to protect their interest was neither impaired nor impeded. [Citations.] Moreover, even if their ability to protect their interest is impaired by their inaction, they are not indispensable. "The Supreme Court provided guidance in this regard when it cautioned against the common blunder of finding any necessary party as indispensable and observed that '. . . we should . . . be careful to avoid converting a discretionary power or a rule of fairness in procedure into an arbitrary and burdensome requirement which may thwart rather than accomplish justice.' "

(*Pinnacle Holdings, Inc. v. Simon, supra,* 31 Cal.App.4th at p. 1436, quoting *Citizens Ass'n. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 162.)

The County has no interest which might be impaired by its absence from the declaratory relief causes of action. Indeed, this Court has acknowledged that the County seems perfectly content to step back and allow this Court to adjudicate the dispute. Furthermore, even if it is assumed that the County did have some interest that might be impaired, that does not raise the County to the level of an indispensable party, as discussed in *Pinnacle.*

In conclusion, the eleventh-hour introduction of the *Pinnacle* case should have no effect on this Court's tentative decision as to the declaratory relief causes of action. MVP has properly pled a justiciable controversy which is ripe for adjudication, and which furthermore is well within this Court's jurisdiction.

For the foregoing reasons, MVP respectfully requests that the demurrer of Chevreaux be overruled as to the declaratory relief causes of action, and this Court's tentative ruling be affirmed.

Respectfully submitted,

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Senior Attorney

Enclosure

cc: Brigit S. Barnes, Esq.
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31 Cal.App.4th 1430

Page 1

31 Cal.App.4th 1430, 37 Cal.Rptr.2d 778
(Cite as: 31 Cal.App.4th 1430)

H

PINNACLE HOLDINGS, INC., Plaintiff and Appellant,
v.
HAROLD SIMON et al., Defendants and Respondents.
No. B078275.

Court of Appeal, Second District, California.
Jan 31, 1995.

SUMMARY

After a city's rent review board failed to grant the total discretionary rent increase the owner of a mobilehome park requested, the owner filed a petition for a writ of mandate and administrative mandamus against city and the board and a complaint for declaratory relief. The trial court sustained, without leave to amend, demurrers filed by four tenants, who had appeared to oppose the increase at the board's hearing and were joined in the cause of action for declaratory relief, and denied the owner's motion to certify the tenants as representatives of a class of tenants. (Superior Court of Ventura County, No. 125343, John J. Hunter, Judge. [FN*])

FN* Retired judge of the Ventura Municipal Court sitting under assignment by the Chairperson of the Judicial Council.

The Court of Appeal affirmed. The court held the trial court properly sustained the tenants' demurrers without leave to amend and denied the owner's motion to certify the class because no relief was sought against or could be given by the tenants; and to join them in this action, with the responsibilities of class representatives, would have a chilling effect on the provision of the rent ordinance allowing interested parties to participate in rent review hearings. (Opinion by Stone (S. J.), P. J., with Gilbert and Yegan, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Parties § 6.5--Class Actions; Class Certification--Discretion of Trial Court as to Certification; Review--Denial of Certification--Defendant Class--From Whom No Relief Sought.

In an action by the owner of a mobilehome park, which was brought after defendant city's rent review board failed to grant the total discretionary rent increase the owner requested, the trial court properly sustained demurrers without leave to amend filed by four tenants, who had appeared to ***1431** oppose the increase at the board's hearing and were joined in the cause of action for declaratory relief, and properly denied the owner's motion to certify the tenants as representatives of a class of tenants. As all the park tenants had been given notice, the city's rent control ordinance gave them the right to bring an action or to intervene in any legal proceeding that ensued from board actions. Although the board's decision might affect the tenants, the relief requested by the owner could be granted without the participation of any tenants. The tenants were not necessary or indispensable parties. Even assuming the owner was challenging an overall policy of the rent ordinance, rather than seeking the same remedies as in the other causes for traditional mandate and administrative mandamus, the owner had requested no relief from the tenants nor could the tenants have granted any relief. The only parties the trial court needed to make a complete determination about the rent increase were the owner and the board. Joining into the litigation, as unwilling defendants, tenants against whom the owner sought no affirmative relief, and imposing upon them the responsibility of monitoring the litigation, would have a chilling effect on the provision of the rent ordinance that allowed interested parties to participate in rent review

hearings.
[See 4 **Witkin,** Cal. Procedure (3d ed. 1985) Pleading, § 200.]
(2) Appellate Review § 128--Scope of Review--Function of Appellate Court-- Rulings on Demurrers--Sustaining Without Leave to Amend--Error or Abuse of Discretion--Matters Considered.
On appeal from an order sustaining a demurrer without leave to amend, the plaintiff has the burden to show either that the demurrer was sustained erroneously or that the court abused its discretion in sustaining the demurrer without leave to amend. The appellate court accepts as true all matters properly pled in the complaint, but may consider matters that may be judicially noted.

(3) Parties § 6--Class Actions; Class Certification--Sufficient Allegations of Class Interest.
Before a hearing may be held on the propriety of a class action, the complaint must contain sufficient allegations of class interest or the pleading is vulnerable to a general demurrer.

(4) Parties § 6.5--Class Actions; Class Certification--Discretion of Trial Court as to Certification; Review.
Whether to certify a class is a decision which rests within the sound discretion of the trial court. A reviewing court will not disturb this decision on appeal if it is supported by substantial evidence, unless the trial court either employed improper criteria or made erroneous legal assumptions. ***1432**

(5) Parties § 6--Class Actions; Class Certification--Requirement of Substantial Benefits to Litigants and Court--Burden of Proof--Party Seeking Class Certification.
In determining whether to certify a class action, trial courts must carefully weigh the respective benefits and burdens and allow maintenance of the class action only where substantial benefits accrue both to the litigants as well as the courts. The party seeking class certification bears the burden of not only showing that substantial benefits, both to the litigants and to the court, will result from class certification, but that the class will be adequately represented and its interests protected.

COUNSEL
Hart, King & Coldren, Robert S. Coldren and C. William Dahlin for Plaintiff and Appellant.
Kurt Delsack, Michael Goode, L. M. Schulner, Timothy S. Camarena and Richard A. Weinstock for Defendants and Respondents.
STONE (S. J.), P. J.
Four tenants of a mobilehome park protested the park owner's request for a rental increase. This exercise of free speech and right to protest resulted in their being named as defendants in the park owner's action against the city for failure to grant the total relief requested. Do the tenants have to remain in the lawsuit and represent unwillingly the rest of the mobilehome park tenants? They do not.

Pinnacle Holdings, Inc. (Pinnacle), appeals from judgments of dismissal in favor of respondents Patty Cau and Harold Simon following the court's sustaining respondents' demurrers without leave to amend and denying Pinnacle's motion to certify respondents as representatives of a class. Pinnacle asserts that the individual defendants were proper parties to the cause of action for declaratory relief as real parties in interest and that the motion to determine and certify the tenants as a class should have been granted. We affirm the judgments.

Facts

Pinnacle owns and operates Imperial Ventura Mobile Estates, a residential mobilehome park which is subject to the City of San Buenaventura's (City) ***1433** mobilehome park rent control ordinance No. 81-39, as amended by City Ordinance Nos. 84-13, 86-1 and 87-15 (Ordinance). In late 1992, Pinnacle applied to the City's mobilehome rent review board (Board) for a discretionary rent increase pursuant to the Ordinance. The Board made an oral decision to allow a lesser increase than requested by Pinnacle. Pinnacle filed a petition for writ of mandate/administrative mandamus and complaint for declaratory relief, challenging the City's decision. Along with the City and the Board, Pinnacle named as defendants and real parties in interest four individual tenants of the mobilehome park who had attended the hearing before the Board

to protest Pinnacle's requested rent increases. Pinnacle also filed a motion pursuant to Code of Civil Procedure section 382 to determine class certification.

Two of the named defendants, Patty Cau (mistakenly named as Patty "Cowe") and Harold Simon, demurred to the petition on grounds of misjoinder and failure to state a cause of action against defendants Cau and Simon for declaratory relief. (Code Civ. Proc., § 430.10, subds. (d), (e), (f).) They and another named defendant, William J. Kilduff, opposed certification of class defendants with them as named representatives. The court sustained respondents' demurrers without leave to amend and denied Pinnacle's motion for certification of class. Judgments of dismissal were subsequently entered.

Discussion

(1a) Pinnacle asserts that the trial court erred in sustaining the demurrers because the individual defendants were proper parties to the cause of action for declaratory relief as real parties in interest. The verified petition declared that " Defendants and Real Parties in Interest William J. Kilduff, Patty Cowe, Patrick Burke and Harold Simon are, and at all times herein mentioned were, residents (tenants) located and currently residing within Imperial Ventura and *not* lessees pursuant to a long-term lease. Pinnacle is informed and believes and thereon alleges that said Real Parties in Interest appeared herein on their own behalf, and on behalf of all similarly situated residents (tenants) of Imperial Ventura...."

The first cause of action for traditional writ of mandate (Code Civ. Proc., § 1085) was against only the Board for violation of applicable laws. The second cause of action for administrative mandamus (Code Civ. Proc., § 1094.5) was also against the Board for allegedly exceeding its jurisdiction and authority, constituting a prejudicial abuse of discretion. The third cause of action for declaratory relief was against all defendants. It alleged that " [a]n actual controversy has arisen and now exists between Pinnacle and ***1434** Respondents/Defendants, and each of them, concerning what is the proper and lawful interpretation of the Ordinance, the City of San Buenaventura's compliance with the Ordinance, applicable law, and the City of San Buenaventura's compliance with applicable law."

The third cause of action also alleged that "... Respondents/Defendants, and each of them, contend and take an opposite position in regard to each of the contentions of Pinnacle as set forth above." It further alleged that "[a] judicial determination and declaration regarding the above-referenced controversy is necessary and appropriate so as to settle the rights, duties and obligations of the parties hereto. A judicial declaration is further necessary and appropriate at this time because an actual controversy exists between Pinnacle and Respondents/Defendants, and each of them, and Pinnacle needs to ascertain its rights, duties and obligations under the Ordinance without being subjected to potential civil liability, potential criminal liability, or a multiplicity of actions by Respondents/Defendants."

In the prayer for the first and second causes of action, Pinnacle prayed for a writ of mandate or administrative mandamus compelling the Board to grant Pinnacle a rent increase based upon its application. Pinnacle further prayed that the Board be ordered to vacate its decision and enter a new and different award granting Pinnacle 100 percent of the consumer price index increase in its net operating income from the base year to present, allowing and calling for Pinnacle to be reimbursed for its actual allowable expenses, and to utilize submetering of utilities as allowed by law and to otherwise grant and enforce Pinnacle's application for a rent increase. In the prayer on the third cause of action, Pinnacle requested a judgment declaring that the Board acted contrary to applicable law and deprived Pinnacle of a just and fair return.

Respondents argued that the petition sought no relief from them and that since they were not members of the Board, they could not grant relief to Pinnacle. Pinnacle contends that the individual residents have received a direct economic benefit at the expense of Pinnacle due to the method

employed by the City and its Board in reviewing Pinnacle's rent increase application. For that reason, Pinnacle named the residents who actually appeared at the hearing as parties to the action, individually and as representatives of the other residents.

(2) Pinnacle has the burden to show either that the demurrer was sustained erroneously or that the court abused its discretion in sustaining the demurrer without leave to amend. (*Smith v. County of Kern* (1993) 20 Cal.App.4th 1826, 1829-1830 [25 Cal.Rptr.2d 716]; *Stanson v. Brown* (1975) 49 Cal.App.3d 812, 814 [122 Cal.Rptr. 862].) We accept as true all ***1435** matters properly pled in the complaint, but may consider matters that may be judicially noted. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8-9, fn. 3 [32 Cal.Rptr.2d 244, 876 P.2d 1043].) (3) Before a hearing may be held on the propriety of a class action, the complaint must contain sufficient allegations of class interest or the pleading is vulnerable to a general demurrer. (*Bartlett v. Hawaiian Village, Inc.* (1978) 87 Cal.App.3d 435, 437-438 [151 Cal.Rptr. 392].) (4) Whether to certify a class is a decision which rests within the sound discretion of the trial court. (*Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271 [242 Cal.Rptr. 339].) A reviewing court will not disturb this decision on appeal if it is supported by substantial evidence, unless the trial court either employed improper criteria or made erroneous legal assumptions. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 655 [22 Cal.Rptr.2d 419]; see also *Osborne v. Subaru of America, Inc.* (1988) 198 Cal.App.3d 646, 654 [243 Cal.Rptr. 815].)

(5) Trial courts must carefully weigh the respective benefits and burdens and allow maintenance of the class action "only where substantial benefits accrue both to the litigants as well as the courts." (*Reyes v. Board of Supervisors*, *supra*, 196 Cal.App.3d 1263, 1271.) Pinnacle, as the party seeking class certification, bears the burden of not only showing that substantial benefits, both to the litigants and to the court, will result from class certification, but that the class will be adequately represented and its interests protected. (*Ibid.*; see also *National Solar Equipment Owners' Assn. v. Grumman Corp.* (1991) 235 Cal.App.3d 1273, 1284 [1 Cal.Rptr.2d 325].)

() Pinnacle asserts that since, on demurrer, its allegations must be accepted as true, respondents could not allege that an actual controversy did not exist regarding the Board's interpretation of Civil Code section 798.41 (allowable utility service fees under the Mobilehome Residency Law [Civ. Code, § 798 et seq.]). Pinnacle argues that, while the tenants may not be indispensable parties, it was permissible to include them within the litigation so that any concern about such parties' due process rights would be eliminated. Respondents were four of over three hundred tenants who received notices of Pinnacle's application for rent increase. These four tenants appeared at the hearing to voice their opposition to an increase, as they had a right to do under the Ordinance (a copy of which is attached to Pinnacle's petition). For their efforts, they are now on the receiving end of a lawsuit. Is this how Pinnacle protects their due process rights?

The tenants are not without means of protecting their interests. They did not need Pinnacle's help. Section 2289.45 of the Ordinance gives tenants the right to seek injunctive relief and damages, individually or by class action, if "any owner demands, accepts, receives or retains any payment of rent in ***1436** excess of the maximum lawful space rent, as determined under this Article ...." Since all tenants to be affected by any increase were on notice that the Board might grant Pinnacle's request, those who have not sought to be joined in the suit apparently chose to live with the Board's decision and the chance it could be overturned on appeal. Those who wished to do so could have taken action pursuant to the Ordinance or intervened in any ensuing legal proceedings. (See Code Civ. Proc., § 387.)

It is true that the Board's decision may affect Pinnacle's tenants. However, the relief requested can be granted without legal participation of any tenants. " 'The question of standing to sue is one of the right to relief and goes to the existence of a cause of action against the defendant ....' " (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605 [279 Cal.Rptr. 877].) The tenants were not necessary parties because their ability to protect their interest

was neither impaired nor impeded. (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 161 [217 Cal.Rptr. 893].) Moreover, even if their ability to protect their interest is impaired by their inaction, they are not indispensable. "The Supreme Court provided guidance in this regard when it cautioned against the common blunder of finding any necessary party as indispensable and observed that '... we should ... be careful to avoid converting a discretionary power or a rule of fairness in procedure into an arbitrary and burdensome requirement which may thwart rather than accomplish justice.' " (*Id.*, at p. 162.)

Pinnacle asserts that it is proper to join respondents in its dispute with the Board even if respondents cannot give the relief sought in the petition because of some passing interest the tenants might have. We disagree. The first cause of action for "traditional mandamus" under Code of Civil Procedure section 1085 is to compel the performance of a duty which is purely ministerial in character. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 247 [115 Cal.Rptr. 497, 524 P.2d 1281].) That cause of action cannot apply to respondents since they have no ministerial duty concerning rent adjustments (Nor does the Board, since its function is discretionary, rather than ministerial.) Nor are respondents proper parties to the cause of action for administrative mandamus under Code of Civil Procedure section 1094.5 since that action is directed to a final administrative order or decision.

Pinnacle asserts that an action for declaratory relief may lie against an administrative agency where the allegation is that the agency has a policy of ignoring or violating applicable laws and regulations, i.e., that the agency has set an overreaching, quasi-legislative policy. (See ***1437***Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1429 [271 Cal.Rptr. 270].) Consequently, Pinnacle argues, since it has alleged that an actual controversy exists between Pinnacle and all defendants, respondents are properly joined, even if they are only real parties in interest and not necessary parties. Again we disagree. " 'The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.' " (*Id.*, at p. 1427.) Even assuming Pinnacle is challenging an overall policy rather than seeking the same remedies as in the first and second causes of action via declaratory relief rather than mandate (see *State of California v. Superior Court*, *supra*, 12 Cal.3d 237, 248-249), Pinnacle has requested no relief from respondents nor can respondents grant any relief. Those facts are dispositive.

" '[I]t is fundamental that a person should not be compelled to defend himself in a lawsuit when no relief is sought against him.' " (*Duffey v. Superior Court* (1992) 3 Cal.App.4th 425, 429 [4 Cal.Rptr.2d 334].) The only parties the trial court needed to make a complete determination about whether the Board correctly calculated the rent increase were Pinnacle and the Board. The application to the Board and the ensuing legal action were brought by Pinnacle, not by the tenants. Respondents have had to incur legal expenses due to Pinnacle's effort to "protect" respondents' right because they appeared at the hearing on Pinnacle's application. Had respondents utilized the procedure set out in Code of Civil Procedure section 425.16, the court might well have granted the motion.

Moreover, the cases Pinnacle cites to support its argument that the court abused its discretion in denying its motion to certify defendants as representatives of the class of tenants are inapposite. For the most part, they concern plaintiffs who *want* to represent a class. (See, e.g., *Rich v. Schwab* (1984) 162 Cal.App.3d 739, 744 [209 Cal.Rptr. 417].) "[T]here is a substantial difference between a plaintiffs' class suit and a lawsuit against a class of defendants. Defendants' class actions involve the serious danger of fraudulent or calculated selection of defendants who might not fully and fairly represent the interests of the class...." (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 844 [199 Cal.Rptr. 134].) Here, Pinnacle was attempting to join into the litigation unwilling defendants and impose upon them the responsibility of monitoring the litigation to make certain that the interests of the alleged class are being protected. " '... [I]t is the responsibility of the class representative to protect the interests of all class members.' " (*Ibid.*) To allow Pinnacle to impose

such responsibility on unwilling parties against whom Pinnacle seeks no affirmative relief would have a chilling effect on the provision of the Ordinance for allowance of interested parties to participate in hearings of this type. ***1438**

The judgments are affirmed. Costs to respondents. FN1

> FN1 Respondent Simon argued that sanctions for frivolous appeal should be imposed. We deny the request for two reasons. It was untimely and Pinnacle's appeal was based on language in prior published opinions which could have led it to conclude respondents were permissible, if not indispensable, parties to the litigation.

Gilbert, J., and Yegan, J., concurred.

Petitions for a rehearing were denied February 16, 1995, and the opinion was modified to read as printed above. ***1439**

Cal.App.2.Dist.
Pinnacle Holdings, Inc. v. Simon
31 Cal.App.4th 1430, 37 Cal.Rptr.2d 778

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