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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

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13 ROBERT TIERNAN, et al.,
14 Plaintiff,
15 vs.
16 DIABLO COMMUNITY SERVICES
DISTRICT, et. al.,
17 Defendants.

Case No. C17-02529
**WINSTON CERVANTES' REPLY BRIEF
IN SUPPORT OF DEMURRER TO FIRST
AMENDED COMPLAINT IN
INTERVENTION**

Date: February 19, 2021
Time: 9:00 a.m.
Dept.: 7
Judge: Hon. Barry Baskin

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19 JEFF MINI, CHRISTINE MINI, et al.,
20 Intervenors,
21 vs.
22 WINSTON CERVANTES, et al.,
23 Defendants.

Action Filed: August 6, 2020

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25 **I. INTRODUCTION**

26 When a declaratory relief cause of action is predicated on an underlying substantive claim
27 that lacks merit, the declaratory relief claim itself is subject to a general demurrer. In an effort to
28 sidestep the fact that their amended second cause of action for declaratory relief is still rooted in

1 their already eliminated cause of action for quiet title (to which the Court sustained Winston
2 Cervantes' demurrer without leave to amend), Intervenors misleadingly conflate their amended
3 claim for declaratory relief with their cause of action for private nuisance in their opposition brief.
4 That is to say, the amended cause of action for declaratory relief *only* seeks a judgment that would
5 invalidate or restrict the scope of the public's right to use the easement that burdens the property in
6 question, property that Intervenors neither own nor claim any interest in. If the amended
7 declaratory relief claim was predicated on the Intervenors' private nuisance claim as Intervenors
8 suggest in their opposition brief, then Mr. Cervantes would not have brought this demurrer.
9 However, it is not.

10 Nowhere in the amended cause of action for declaratory relief (First Amended Complaint
11 in Intervention ("FACI") at ¶¶ 35-41) are there any allegations that the public's use of the
12 easement would negatively impact the surrounding neighborhood. Allegations of that nature
13 appear in the third cause of action for private nuisance only. (FACI at 2:27 – 3:3 and 3:14 – 3:17.)
14 It is quite telling therefore that the Intervenors suddenly change course in their opposition to this
15 demurrer by arguing that their amended declaratory relief claim should be allowed to stand
16 because the public's use of the easement negative impacts the streets and properties of their
17 neighborhood (Opposition Brief at 2:27 – 3:1 ["This is a matter of serious concern to the residents
18 of Diablo who, as a result of the unpermitted uses of the Cut-Through by bicyclists, **have seen**
19 **their narrow roadways become dangerous and overburdened**"], and at 3:14 -3:17 ["If Mr.
20 Cervantes has standing to seek rights over private property for the general public, how can
21 Intervenors, **who would be directly affected by hordes of bicyclists riding over their private**
22 **property**, lack the same standing to contest Mr. Cervantes' interpretation of the 1979 Parcel
23 Map?"] (Bold added for emphasis).)

24 The Intervenors change course in their opposition brief by arguing that they have standing
25 to pursue their declaratory relief claim based on the alleged disturbance that the use of the
26 easement by bicyclists has on their neighborhood precisely because they know that their
27 declaratory relief claim still cannot stand as they have alleged it. Their declaratory relief claim is
28 merely an attempt to restate their earlier claim to quiet title to property they neither own nor even

1 claim to hold any interest in. Intervenors' alternative argument – that if the easement in quest is
2 effective, then they would use the easement and therefore they have standing to seek to prevent
3 others from riding bicycles along the easement – is supported by no authorities and fails to move
4 them past the standing threshold.

5 Intervenors' amended declaratory relief claim is simply an altered version of their quiet
6 title cause of action that was eliminated pursuant to Mr. Cervantes' demurrer to Intervenors'
7 original Complaint-in-Intervention on the ground that Intervenors lack standing to pursue the
8 claim. Mr. Cervantes therefore respectfully requests that the Court sustain this demurrer to the
9 declaratory relief cause of action in the First Amended Complaint-in-Intervention without leave to
10 amend on the ground that it is wholly derivative of the same quiet title claim.

11 **II. LEGAL DISCUSSION**

12 **A. The Amended Declaratory Relief Claim is a Disguised Restatement of the**
13 **Intervenors' Earlier Quite Title Claim**

14 The bulk of Intervenors' opposition brief arguments can largely be summarized as follows:
15 Defendant Winston Cervantes has his own cross-complaint in this action where he seeks to quiet
16 title to an easement in favor of the public on property that he doesn't own, so why can't we pursue
17 declaratory relief on the flipside, that the public doesn't have the right to use the easement?
18 Intervenors made that same argument in their opposition to Mr. Cervantes' demurrer to their
19 original Complaint-in-Intervention, to no avail. Their argument is a logical fallacy.

20 Mr. Cervantes has standing to pursue his cross-claim to quiet title to the easement in
21 question because he alleges that he, along with the rest of the general public in whose favor the
22 easement was dedicated, has the right to use the easement without unreasonable interference from
23 the residents of the neighborhood, including the Intervenors. If the Intervenors were to allege that
24 they have an easement or other interest in the parcels in question, then they would have legal
25 standing to do so, but the inverse is not true. If one wants to establish that a parcel of real property
26 is *not* subject to a claimed easement, lien or other interest in real property, then that person must
27 themselves own an interest in the subject property, or at least claim to own an interest. The
28 Intervenors want to have it both ways: they argue that the easement in question is not valid, and

1 therefore no one but the owners of the property in question have the right to use it, but at the same
2 time they argue that if the easement is valid, then they have standing as members of the public to
3 prevent or limit how others may use the easement.

4 The allegations in support of Intervenor’s Second Cause of Action i.e. the declaratory
5 relief cause of action, make it self-evident that it is not one on which relief can be granted. The
6 Second Cause of Action seeks a judicial determination as to whether a dedicated 25 foot easement
7 (the “Cut-Through”) that was dedicated to the state on Omid Bahrami (“Bahrami”) and Mojdeh
8 Salehomoun’s (“Salehomoun”) property – 2354 Alameda Diablo, Diablo, California (the
9 “Property”) – for riding and pedestrian purposes, has expired and does not encumber the Property,
10 or alternatively whether Mr. Bahrami and Ms. Salehomoun may limit Mr. Cervantes’ and the
11 public’s use of the Cut-Through specifically for hiking and horse riding purposes. (First Amended
12 Complaint-in-Intervention (“FAC”) at 9:11 – 26.) Thus, the Second Cause of Action continues to
13 in essence be a quiet title action, or wholly derivative of it, which the court has already
14 determined, Intervenor’s lack standing to pursue.

15 A person having no title in a parcel of land has no standing to complain that someone else,
16 also without title asserts an interest in the land. *Pacific States Savings & Loan Co. v. Warden*
17 (1941) 18 Cal.2d 757, 759; *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th
18 734, 751. Therefore the right to declaratory relief requires the complaining party to demonstrate it
19 has standing to pursue the claim involved. *Ibid.* Where the claim is derivative of another cause of
20 action as to which complaining party has not alleged facts sufficient to support a right to relief,
21 then the declaratory relief claim must also fail. *Smyth v. Berman* (2019) 31 Cal.App.5th 183, 191-
22 92. Injunctive and declaratory relief are equitable remedies not causes of action, therefore a court
23 may sustain a demurrer as to those claims that are “wholly derivative of” other nonviable causes of
24 action. *Faunce v. Cato* (2013) 222 Cal.App.4th 166, 172; *Wong v. Tai Jing* (2010) 189
25 Cal.App.4th 1354, 1361; and *Ochs PacifiCare of California* (2004) 115 Cal.App.4th 782, 794.

26 Intervenor’s do not bring a separate and affirmative quiet title action against the said owners
27 to allow their use of the Cut-Through. If that was their claim, then Intervenor’s would have
28 standing to bring such an action for the same reason that Mr. Cervantes has standing to bring his

1 quiet title action. Instead however, Intervenor seek to prevent and interfere with how Mr.
2 Cervantes and members of the general public use the Cut-Through on the Property that they
3 neither own nor claim to have any interest in. Intervenor’s amended Second Cause of Action
4 simply seeks a court declaration as to how the easement on someone else’s property may or may
5 not be used. It is, in essence, an attempt to revive their quiet title claim under the guise of a
6 declaratory relief cause of action.

7 Since Intervenor’s Second Cause of Action is wholly derivative of the nonviable quiet title
8 action from Intervenor’s original Complaint-in-Intervention, the Court should sustain Mr.
9 Cervantes’ demurrer to the said cause of action, without leave to amend.

10 **B. The Court May Sustain This Demurrer Because the Amended Declaratory**
11 **Relief Claim Improperly Seeks Relief for Which Intervenor Have no**
12 **Standing**

13 The court may refuse to exercise the power of declaratory relief in any case where its
14 declaration or determination is not necessary or proper at the time under all the circumstances. *D.*
15 *Cummins Corp. v. U.S. Fidelity and Guaranty Co.* (2016) 246 Cal.App.4th 1484, 1490; *Meyer v.*
16 *Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647; *Otay Land Co. v. Royal Indem. Co.* (2008) 169
17 Cal.App.4th 556, 563.

18 In *Otay, supra*, the plaintiff was an owner of real property who brought a declaratory relief
19 action against the liability insurer of the property's former owner regarding the insurer's
20 anticipated coverage with respect to contamination problems at the property. The plaintiff
21 admitted that it did “not fit into the usual categories for establishing it has standing to sue, in light
22 of its lack of contractual privity with the insurer” (e.g., such exceptions exist where the third party
23 plaintiff has a judgment against the insured, or where the insurer has sued the third party in its own
24 right for declaratory relief, or where there was an assignment by the insured of its rights under the
25 policy to the third party), but argued nonetheless that it had standing to bring a declaratory relief
26 action against the insurer of a policyholder on the ground “that declaratory relief should be
27 ‘expansively’ allowed.” (*Otay, supra*, at p. 565.) The Court of Appeal disagreed, explaining that
28 Code of Civil Procedure section 1060 “has never been interpreted as no longer requiring
appropriate standing to seek declaratory relief...” The Court of Appeal went on to hold that the

1 trial court had therefore properly sustained the defendant insurer's demurrer without leave to
2 amend because the plaintiff could not plead sufficient facts to establish it had standing to sue the
3 insurer to determine the applicability of the former owner's insurance. *Id.* at pp. 558, 567–568.

4 The Intervenors’ argument in their opposition brief that their “...declaratory relief cause of
5 action seeks a different form relief in a different manner” from their prior quiet title claim lacks
6 merit. In its essence, their declaratory relief claim still seeks to eliminate altogether, or
7 alternatively limit the scope of, an easement that was recorded against a parcel of property they
8 don’t own. If their declaratory relief claim were to allege that the use of the easement by cyclists –
9 or anyone else who is a member of the public – creates a nuisance for their neighborhood, then
10 that would be different: their declaratory relief claim would be predicated upon their private
11 nuisance claim (albeit redundant). They would have standing to pursue that claim because the
12 nature of it would be steeped in nuisance. But their declaratory relief claim alleges nothing about
13 nuisance. Instead, it alleges that the easement dedication on Parcel Map 263-78 has expired and
14 therefore no longer encumbers the property in question; and that the easement dedication, if it still
15 impacts the property at all, is limited in scope to pedestrian and equestrian use only. This means
16 that they are seeking declaratory relief from the court about whether or not the property they don't
17 own is subject to an easement and, if so, the scope of that easement. No matter how hard they try
18 to spin and present their declaratory relief as something else, it is a cause of action to quiet title
19 disguised as something else.

20 Since Intervenors have clearly failed to satisfy the standing requirement for their
21 declaratory relief claim, the Court may use their discretionary powers pursuant to Code Civ. Proc.
22 §1061 to sustain the demurrer, without leave to amend.

23 **III. CONCLUSION**

24 Intervenors once again fail to satisfy the fundamental standing requirement for their
25 amended Second Cause of Action for declaratory relief. Intervenors’ claimed “interest” in the
26 Cut-Through is an indirect and practical interest, and not one that provides them the ability to
27 interfere with the use of the Cut-Through by Mr. Cervantes or members of the general public.
28 Their declaratory cause of action seeks the same relief sought in their earlier, and now eliminated

1 quiet title cause of action. Accordingly, Mr. Cervantes respectfully requests that this demurrer be
2 sustained as to the Second Cause of Action without leave to amend.

3 DATED: February 9, 2021

WENDEL ROSEN LLP

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5 By:



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7 Radhika Thanedar
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PROOF OF SERVICE

**Cervantes v. Diablo Community Services District; Omid Bahrami, et al.
Contra Costa County Superior Court Case No. C17002529**

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1280 Civic Drive, Suite 210, Walnut Creek, CA 94596.

On February 10, 2021, I served true copies of the following document(s) described as **WINSTON CERVANTES' REPLY BRIEF IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT IN INTERVENTION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address mhinton@wendel.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 10, 2021, at Walnut Creek, California.

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SERVICE LIST
Cervantes v. Diablo Community Services District; Omid Bahrami, et al.
Contra Costa County Superior Court Case No. C17002529

PARTIES AGREE TO SERVICE BY E-MAIL

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PROOF OF SERVICE

**Cervantes v. Diablo Community Services District; Omid Bahrami, et al.
Contra Costa County Superior Court Case No. C17002529**

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1111 Broadway, 24th Floor, Oakland, CA 94607-4036.

On February 10, 2021, I served true copies of the following document(s) described as **WINSTON CERVANTES' REPLY BRIEF IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT IN INTERVENTION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY: I caused the enclosed said document(s) to be placed in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. The envelope or package has been placed for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 10, 2021, at Oakland, California.



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