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Manny Mabunga - Grant tentative on demurrer

From: Judge Cesar Sarmiento
To: Mabunga, Manny
Date: 3/7/2011 2:33 PM
Subject: Grant tentative on demurrer

IL

TENTATIVE RULING:

(1) Defendant Mountain Recreation & Conservation Authority's demurrer to the complaint is OVERRULED as to the 1st, 2nd, and 3rd causes of action, and SUSTAINED without leave to amend as to the 4th – 9th causes of action.

(2) Defendant Redflex Traffic Systems, Inc.'s Special Motion to Strike is DENIED. Redflex fails to show that the complaint arises from conduct in furtherance of the right of petition or the right of free speech.

ANALYSIS:

Is MRCA Subject to the Requirements of the Vehicle Code?

Defendant Mountains Recreation & Conservation Authority ("MRCA") argues that the demurrer should be sustained as to the first through ninth causes of action because MRCA's ordinances are not required to comply with the Vehicle Code. MRCA argues that its ordinance is not subject to the Vehicle Code because it is not a "local authority" under Vehicle Code § 21. Alternatively, MRCA argues that its authority to enact traffic ordinances is derived from the Public Resources Code.

(a) Is MRCA a "Local Authority" Under Vehicle Code § 21?

"The state's plenary power and its preemption of the entire field of traffic control are stated in Vehicle Code section 21." Rumford v. City of Berkeley (1982) 31 Cal. 3d 545, 550. Vehicle Code Section 21 in its current form states:

> Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no *local authority* shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.

Vehicle Code § 21 (emphasis added). Thus, unless "expressly provided" by the Legislature, a "local authority" has no power to regulate vehicular traffic. Rumford, supra, 31 Cal. 3d at 550. The Vehicle Code defines a "local authority" as follows:

> "Local authorities" means the legislative body of every county or municipality having authority to adopt local police regulations.

Vehicle Code § 385.

MRCA argues that it is not a "local authority" because it is not the legislative body of a county

or municipality. MRCA argues that the intent to exclude it from compliance with the Vehicle Code is clearly expressed in the amended version of Vehicle Code § 21, which becomes effective July 1, 2011. The amended version states

> (a) Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on the matters covered by this code, including ordinances or resolutions that establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation of, matters covered by this code, unless expressly authorized by this code.
>
> (b) To the extent permitted by current state law, this section does not impair the current lawful authority of the Mountains Recreation and Conservation Authority, a joint powers authority, or any member agency constituted therein as of July 1, 2010, to enforce an ordinance or resolution relating to the management of public lands within its jurisdiction.

[RJN, Exh. A (emphasis added).] MRCA argues that the amended version of § 21 "plainly states that the MRCA has 'current lawful authority' 'to enforce an ordinance or resolution relating to the management of public lands within its jurisdiction.'...Taken together with the statement 'this section does not impair' there is no doubt that the Legislature did not (and does not) intend for the Vehicle Code to prohibit the MRCA from enforcing traffic management provisions in the Park Ordinance." (Demurrer, 4:13-19.)

The court disagrees. It is apparent that the state has legislatively occupied the field of traffic control on public streets. As stated in Mervynne v. Acker (1961) 189 Cal. App. 2d 558:

> The right of the state to exclusive control of vehicular traffic on public streets has been recognized for more than forty years. While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. Traffic control on public highways is not a 'municipal affair' in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state.

Id. at 561-562. Thus, since the Legislature intends the traffic laws to be uniform throughout the state, it is apparent that the terms "county" and "municipality" in Vehicle Code § 385 be given a broad interpretation.

Moreover, under Joint Exercise of Powers Act ("JPA"), two or more "public agencies" may agree to "jointly exercise any power common to the contracting parties..." Govt. Code § 6502. The ability of public agencies to jointly exercise their powers includes the ability to create a separate agency or entity responsible for the administration of the agreement. Govt. Code § 6503.5. A "public agency" as defined under the JPA includes a county or city. Govt. Code § 6500. Thus, under the JPA, two cities could form a separate entity to enact and enforce traffic laws. Under MRCA's theory, this new entity would then be exempt from compliance with the Vehicle Code because it is not the "legislative body of a county or municipality." The ability of agency formed under the JPA to circumvent the Vehicle Code would be directly contrary to the Legislature's clear intent to occupy the field.

Finally, the amended § 21(b) does not support MRCA's argument. Section 21(b) does

not expressly authorize the MRCA to enact traffic ordinances. Rather, the reservation of authority in §21(b) is limited to "the extent permitted by current state law" and to ordinances "relating to the management of public lands." As discussed below, MRCA does not have authority under "current state law" to enact traffic law ordinances.

Accordingly the court finds that MRCA has failed to show that MRCA is not a "local authority."

(b) MRCA's Authority to Enact Traffic Ordinances Under the Public Resource Code

The authority of a joint powers entity is limited to the common power specified in the joint powers agreement. Govt. Code §§ 6502; 6508. Thus, a joint power entity cannot have any authority greater than that vested in its member agencies. MRCA argues that the Conejo and Rancho Simi Recreation and Park Districts, and the Santa Monica Mountains Conservancy have authority under Pub. Res. Code §§ 5786.1(j) and 33211.5, respectively, to adopt rules and regulations for park roads within their boundaries.

Section 5786.1 of the Public Resources Code states in pertinent part:

> a "recreation and park district" shall have and may exercise all rights, and powers, expressed or implied, necessary to carry out the purposes and intent of this chapter, including, but not limited to... (j) To adopt and enforce rules and regulations for the administration, operation, use, and maintenance of the recreation facilities, programs, and services listed in Section 5786.

Pub. Res. Code § 5786.1(j). Section 5786 of the Public Resources Code addresses the powers and duties of a Recreation and Park District. It states

> A district may:
> (a) Organize, promote, conduct, and advertise programs of community recreation, including, but not limited to, parks and open space, parking, transportation, and other related services that improve the community's quality of life.
> (b) Establish systems of recreation and recreation facilities, including, but not limited to, parks and open space.
> (c) Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to, parks and open space, both inside and beyond the district's boundaries.

Pub. Res. Code § 5786.1(j).

Neither of these sections grant a Parks District authority to enact or enforce traffic regulations. Its powers and duties are limited to (a) organizing, promoting, conducting, and advertising *programs of community recreation*...(b) establishing *systems of recreation and recreation facilities*, and (c) acquiring, constructing, improving, maintaining, and operating *recreation facilities*. Traffic control is not a "program of community regulation," "system of recreation," and park roads are not "recreation facilities."

MRCA also cites to Pub. Res. Code § 33211.5(a)(3). Section 33211.5 of the Public Resources Code states in pertinent part:

> (a) The following conditions of use apply to property owned or subject to the management of the conservancy...(3) Vehicles shall park only in designated areas and may not be operated off of roads or other areas designated for vehicle use. All vehicle use, including bicycles, shall conform to posted signs.

Pub. Res. Code § 33211.5(a)(3). This section does not state that the Santa Monica Conservancy has authority to enact traffic regulations. Moreover, the declaration of power to the Conservancy in § 33211 does not mention regulation of traffic. § 33211 states:

> The conservancy may:
>
> (a) Accept any gifts, donations, or bequests from individuals, corporations, or organizations, or accept grants of funds from private or public agencies. A gift of personal property otherwise required to be approved by the Director of Finance pursuant to Section 11005 of the Government Code is deemed approved, unless it is disapproved within 60 days of receipt of a request from the executive director of the conservancy to approve the gift. A gift of real property shall be submitted by the executive director to the Department of General Services for its review. The Department of General Services shall complete its review within 30 days of receipt of a completed request and shall transmit the request for approval to the Director of Finance within that period. Unless the gift of real property is disapproved by the Director of Finance within 30 days of its receipt of the request, the gift is deemed approved pursuant to Section 11005 of the Government Code.
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> (b) Contract for professional services required by the conservancy or for the performance of work and services which in its opinion cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies.
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> (c) Do any and all other things necessary to carry out the purposes of this division.
>
> (d) Sue and be sued.

Pub. Res. Code § 33211.

Finally, the court notes that even if the Public Resources Code granted the Parks Districts or Santa Monica Conservancy authority to enact traffic regulations, such authority would not automatically flow to MRCA. As stated above, the authority of a joint powers entity is limited to the common power specified in the joint powers agreement. Govt. Code §§ 6502; 6508. Thus, the MRCA only has the powers that the Parks Districts and Santa Monica Conservancy granted it through the joint powers agreement. The joint powers agreement, which the court takes judicial notice of, states that common authority is the authority to "acquire, develop, and conserve open space and other parkland for the public benefit, and for public recreation, use, and enjoyment." (RFJN, Ex. C.)

Accordingly, the court finds that MRCA has failed to show that it has an independent authority to enact traffic regulations/ordinances. Thus, the demurrer to the entire complaint on this ground is OVERRULED.

Second and Third Cause of Action: Violation of Due Process

MRCA argues that the second and third causes of action fail to state a violation of due process because the procedure set forth in the Park Ordinance is not "fundamentally unfair." MRCA argues that payment of the citation fee prior to the administrative hearing comports with due process. MRCA cites Love v. City of Monterey (1995) 37 Cal. App. 4th 562 and Tyler v. County of Alameda (1995) 34 Cal. App. 4th 777.

MRCA's argument fails. In Tyler, the court found that "the deposit of $250 in payment of the parking penalty is a deprivation of property, albeit temporary, which comes within the purview of the due process clause." Id. at 783. The court also found that whether a

predeprivation hearing is required is determined by a three-part balancing test. Id. at 785.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (424 U.S. at p. 335 [47 L.Ed.2d at p. 33].) "The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness."

Id. at 784-785 (citing Mathew v. Eldridge (1976) 424 U.S. 319). The evaluation of these factors, however, is a factual inquiry, which goes beyond the scope of review on demurrer. The court finds that Plaintiff has sufficiently alleged a deprivation of due process due to the requirement that the administrative penalty be paid prior to the hearing. Accordingly, the demurrer to the second and third causes of action are OVERRULED.

4th-7th Causes of Action: Violation of Business and Professions Code § 17200

MRCA argues that it is not subject to liability because it is not a "person" within the meaning of the UCL. The court agrees.

"The UCL authorizes courts to enjoin " *[a]ny person* who engages, has engaged, or proposes to engage in unfair competition ...." (§ 17203, italics added.) The UCL includes within its provisions it own unique definition of "person": 'As used in this chapter, the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.' (§ 17201.)" PETA v. Cal. Milk Prod. Ad. Bd. (2005) 125 Cal. App. 4th 871, 877-878. MRCA is a public entity, not a natural person, corporation, firm, partnership, etc. As stated in PETA, supra,

> As respondent notes, had the Legislature wanted to include governmental entities in its definition of "person" for purposes of the UCL, it would have done so. We agree. The Unfair Practices Act (commencing with § 17000), which was enacted in 1941,[FN6] contains its own definition of "person" to include "any person, firm, association, organization, partnership, business trust, company, corporation or *municipal or other public corporation.*" (§ 17021, italics added.) In contrast, the UCL (commencing with § 17200), which was enacted, later in 1977,[FN7] omitted "municipal or other public corporation" from its definition of "person." (§ 17201.) Therefore, had the Legislature wished to include governmental entities, such as the CMAB, in its definition of "person[s]" subject to UCL liability it would have done so by using language similar to that in section 17021.

Id. at 879.

Since MRCA is not a "person" as defined in Bus & Prof. § 17201, it cannot be sued for violation of the Unfair Competition Law. Accordingly, the demurrer to the fourth, fifth, sixth and seventh causes of action is SUSTAINED.

8th-9th Causes of Action

Plaintiff agrees to dismiss these causes of action.

ANALYSIS OF ANTI-SLAPP:

Ruling Standard on Anti-SLAPP

In determining whether to grant or deny a defendant's § 425.16 special motion to strike, the court must engage in a two-step process. Shekhter v. Financial Indemnity Co. (2001) 89 Cal.App.4th 141, 150. First, the court must decide whether the defendant has met the threshold burden of showing that the plaintiff's cause of action *arises from* the defendant's constitutional rights of free speech or petition for redress of grievances. Id. This burden may be met by showing the act which forms the basis for the plaintiff's cause of action was an act that falls within one of the four categories of conduct set forth in 425.16(e).

If the defendant meets his initial burden, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim – i.e., present facts which would, if proved at trial, support a judgment in the plaintiff's favor. Shekhter , supra, at 150-51. In making its determination on this prong of the analysis, the trial court is required to consider the pleadings and the supporting and opposing affidavits stating the facts upon which the liability or defense is based. Church of Scientology, supra, at 646. However, the court does not "weigh credibility [nor] compare the weight of the evidence. Rather, [the court] accepts as true the evidence favorable to the plaintiff and evaluates the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." Flatley v. Mauro, (2006) 39 Cal.4th 299, 326.

First Prong – Protected Activity

In determining whether a defendant seeking to strike a claim under the anti-SLAPP statute has made a prima facie showing that the plaintiff's action arises from activity protected by statute, the critical consideration is *whether the plaintiff's cause of action itself, and the act which the plaintiff complains of*, is based on an act taken by defendant in furtherance of his right of petition or free speech. See, e.g., Philipson & Simon v. Gulsvig (2007) 154 Cal.App.4th 347, 357; Birkner v. Lam (2007) 156 Cal.App.4th 275, 281; Paul for Council v. Hanyecz (2001) 85 Cal.App.4th 1356, 1364. "The anti-SLAPP statute's definitional focus is not on the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability-and whether that activity constitutes protected speech or petitioning." Navellier v. Sletten (2002) 29 Cal.4th 82, 92 (emphasis in original). The statute is to be broadly applied and includes four categories of protected conduct:

(1) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law (§425.16(e)(1));
(2) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law (§425.16(e)(2));
(3) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest (§425.16(e)(3)); or
(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest (§425.16(e)(4)).

Here, Defendant Redflex argues that the actionable conduct in the complaint, i.e. Redflex's collection and transmission of photographic evidence to MRCA constitutes a "writing made in connection with an official proceeding." The court finds that Redflex has failed to meet its burden.

First, assuming that Plaintiff's complaint against Redflex arises from Redflex's collection and transmission of photographic evidence to MRCA, the court nevertheless finds that such conduct is not conduct in furtherance of the right to free speech or right to petition. It is true that § 425.16(e)(2) has been interpreted broadly so as to include "communications to an official agency intended to induce the

agency to initiate action". Thus, the anti-SLAPP statute has been applied to a parent's complaint to school officials about a coach (Lee v. Fick (2005) 135 Cal. App. 4th 89), complaints to the U.S. Dept. of Housing and Urban Development (Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal. 4th 1106), and police reports (Salma v. Capon (2008) 161 Cal. App. 4th 1275). In all of these cases, however, and in the cases cited by Redflex, the complaints or reports were made by the defendant to induce official action to remedy the conduct that is the subject of the complaint. That is, the complaints were made to induce official action to redress a grievance. For example, in Lee v. Fick, the parents made a complaint to school officials regarding the coach's verbally abusive treatment of his players and requesting that the coach be fired. Thus, in the cited cases the defendant's underlying conduct was clearly an exercise of the constitutional right of petition for the redress of grievances.

Here, however, Redflex's collection and transmission of evidence to MRCA is not intended to redress a grievance of Redflex. Redflex's conduct is simply intended to report data to MRCA and after receipt of such data a park ranger then decides whether an ordinance violation has occurred. Redflex's data transmission to MRCA is not a complaint of a grievance because Redflex has no interest in whether or not a violation has occurred. Thus, although Redflex's collection and transmission of evidence to MRCA may trigger official action, and thus in its broadest conception is "a writing in connection with an official proceeding," it cannot be considered an act in furtherance of the right to petition to which the anti-SLAPP statute applies.

Second, the court finds that Redflex has failed to show that Plaintiff's complaint "arises from" Redflex's collection and transmission of photographic evidence to MRCA. For example, in *Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, the plaintiff sued State Farm for claims handling misconduct in violation of the unfair competition law. The complaint referenced an investigation conducted by the California Dept. of Insurance in which the Department found that State Farm had mishandled almost fifty percent of the claims it had investigated. State Farm filed a special motion to strike, arguing that the suit interfered with its ability to respond to an official proceeding and its right to communicate freely with a regulatory agency conducting an official inquiry. The trial court granted the motion. The Court of Appeal reversed on the ground that the complaint did not arise from protected conduct. The court stated

> [Plaintiff's] complaint alleges that State Farm engaged in certain claims handling misconduct and violated a number of statutory and regulatory rules. He seeks, on behalf of the general public, to call State Farm to task for *that conduct.* Plaintiff seeks no recovery from State Farm for State Farm's activity in *communicating information* to DOI, nor does he allege that any such communication was wrongful or the cause of any injury to him. The allegations that State Farm engaged in claims handling misconduct do not charge an act that State Farm could or would argue was done by it "in furtherance of" its petition or free speech rights.

Id. at 1399.

Similarly, here, Plaintiff's complaint does not allege that Plaintiff has been injured by Redflex's collection or transmission of the photographic evidence; e.g. Plaintiff does not allege that the collection/transmission of the photograph was a violation of his privacy. Rather, Plaintiff alleges that the photographic enforcement system designed, maintained and operated by Redflex does not comply with the Vehicle Code and that the administrative hearing process requiring prepayment of the administrative fine is a violation of due process. Such conduct, like State Farm's, are not acts in furtherance of the right of petition or free speech.

Accordingly, since Redflex fails to meet its burden of showing that the complaint arises from protected activity, the special motion to strike is DENIED.