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FILED
Superior Court of California
County of Los Angeles

MAY 18 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: J. De Luna, Deputy

Leroy Butts v. City of Lancaster, et al.,
21STCP00389

~~Tentative~~ decision on demurrer: overruled

Respondent City of Lancaster (“City”) demurs to the sixth cause of action of the verified Petition for writ of mandate filed by Petitioner Leroy Butts (“Butts”).

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner Butts commenced this proceeding on February 8, 2021 against Respondents City of Lancaster (“City”), the Department, and Andrew Lizarde, alleging causes of action for: (1) traditional mandamus, (2) illegal expenditure and waste of funds (CCP §526(a)), and (3) violation of the Tom Bane Civil Rights Act (Civil Code §52.1(b)). The verified Petition alleges in pertinent part as follows.

The City maintains an administrative citation system that is unconstitutional, wasteful, and highly punitive by design. In 2014, California voters passed Proposition (“Prop”) 47, the Safe Neighborhoods and Schools Act. Prop 47 reclassified six low-level drug and property felonies to misdemeanors in order to reduce spending on incarceration. It mandated that the savings from reduced incarceration be reallocated towards local prevention, treatment, and rehabilitation programs.

To counteract this change in state law, the Lancaster City Council enacted Ordinance No. 1001, the City of Lancaster’s Administrative Penalties for State Offenses ordinance (“Ordinance”), codified in Lancaster Municipal Code (“LMC”) Chapter 9.48. The Ordinance expressed the City’s intent to implement an administrative program more punitive than the criminal court system, and authorized law enforcement to issue administrative citations imposing fines of \$500 to \$1000 for the state offenses reclassified by Prop 47. Members of the public expressed concerns about both the legality and effectiveness of the Ordinance and questioned whether such high citation fines could be paid if imposed on unhoused or otherwise indigent individuals. Nevertheless, the City passed the Ordinance and continues to enforce its administrative citation system through and with LASD.

The City and LASD engage in an illegal pattern and practice of imposing invalid administrative penalties under LMC section 9.48.050(F), which authorizes administrative citations for “Disturbing the peace, as set forth in Section 415 of the Penal Code.” On information and belief, the City and LASD maintain a pattern and practice of enforcing LMC section 9.48.050(F) citations where neither the circumstances present nor the factual basis alleged satisfy the elements of Penal Code section 415. In particular, the City and LASD cite unhoused people for allegations unrelated to fighting or maliciously disturbing another, but directly tied to their homeless status, including their presence at encampment clean-up sites and sleeping in a vacant lot.

The Ordinance imposes penalties of \$500 for a first citation and \$1000 for a second and any subsequent citation. The City concurrently authorizes LASD to issue administrative citations for alleged violations of LMC and imposes administrative penalties of \$500 pursuant to its general administrative citation ordinance, LMC Chapter 1.16.

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The City's administrative citation system includes no pre-deprivation process for challenging a citation charge or fine. The City maintains a "pay-to-appeal" scheme that requires pre-payment of the \$500 or \$1000 penalty to obtain any appeal hearing. LMC sections 1.16.090(A) and 9.48.070 both require a citation appeal to be accompanied by deposit of the penalty amount. The back of the City's administrative citation form states: "You must deposit the full amount of the penalty with your request for appeal, which will be returned to you if you are found not to be in violation."

The City's administrative citation system does not provide access to a waiver or ability to pay reduction for indigent persons who wish to contest or appeal an administrative citation but cannot afford to pay the penalty in advance. If a person is not able to pay the citation penalty within 30 days, the City threatens to block the person's driver's license renewal and file a claim against their income tax return, refers the citation to collections, and imposes additional fees. On information and belief, the City has taken such collection action and continues to take collection action on hundreds of citation penalties of \$500 or more that were imposed without any pre-deprivation process or ability to pay determination pursuant to its administrative citation scheme.

On information and belief, the City wastes public funds in its attempts to collect the penalties. In the past budget cycle, the City paid contractor Turbo Data Systems, Inc. \$60,000 to provide data entry, notice, mail processing, and revenue collection services for its administrative citation system. On information and belief, Turbo Data System's revenue collection services resulted in collection of only \$36,695 in revenue, just over half of the contract cost. The City deposits the citation penalties in its general fund.

On August 22, 2019, LASD wrongfully and improperly issued a citation to Butts for drinking in public, despite the fact that the issuing deputy did not observe Butts possess or consume alcohol in public or otherwise have any basis in fact to conclude that Butts had possessed or consumed alcohol. The deputy issued the citation to Butts in retaliation for his actions in attempting to educate unhoused persons of their right to remain in the City's American Heroes Park. Because of his indigence, Butts was not and is not able to pay the \$500 citation penalty, nor is he able to pay the \$150 collection fee imposed on him as a result of his inability to pay the penalty.

B. Applicable Law

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempels, (1950) 36 Cal.2d 257. The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP § 430.40; Skrbina v. Fleming Companies, (1996) 45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The

pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain (“uncertain” includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP §411.35 or (i) by §411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff’s ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.31(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.31(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.31(a)(3).

C. Analysis

Respondent City demurs to the Petition’s sixth cause of action. The City has complied with the meet and confer requirements of CCP section 430.41(a). Burns Decl., ¶¶ 4-7.

The City argues that the Petition’s sixth cause of action alleging a violation of the Bane Act is subject to demurrer for failing to comply with the requirements of the Government Claims Act (“Claims Act”).¹ Dem. at 4; Reply at 4. The essential elements of a Bane Act claim are (1) an attempted or completed act of interference with a legal right (2) accompanied by a form of coercion. City and County of San Francisco v. Ballard, (2006) 136 Cal.App.4th 381, 408.

Under the Claims Act, a plaintiff bringing suit for monetary damages against a public entity or employees thereof must first present a claim to the public entity which must be acted upon or deemed rejected by the public entity. §§ 945.4, 950.2, 950.6(a). Failure to allege facts

¹ All further statutory references are to the Government Code unless otherwise stated.

demonstrating or excusing compliance with the claim presentation requirement under the Claims Act subjects a claim against a public entity to general demurrer for failure to state a cause of action under CCP section 430.10(e). State of California v. Superior Court, (2004) 32 Cal.4th 1234, 1239, 1243.

In support of its demurrer, the City requests judicial notice of the following exhibits: (1) Butts' initial tort claim to the City dated February 18, 2020 (Ex. A); (2) Butts' second tort claim to the City dated February 28, 2020 (Ex. B); (3) the City's written response dated February 25, 2020 and denying Butts' initial claim (Ex. C); and (4) the City's written response dated March 10, 2020 and denying Butts' second claim (Ex. D).

The City notes that a plaintiff's complaint alleging Claims Act compliance must be consistent with the facts in the claim to the public entity or it is subject to demurrer. Watson v. State of California, (1993) 21 Cal.App.4th 836, 844-45. If a plaintiff's complaint alleges Claims Act compliance and the public records do not reflect such compliance, the public entity may ask for judicial notice that the entity's records do not show compliance. Gong v. City of Rosemead, (2014) 226 Cal.App.4th 363, 376 (citing Fowler v. Howell, ("Fowler") (1996) 42 Cal.App.4th 1746, 1752). Dem. at 3, n.1.

These cases do not aid the City's position. Gong cited Williams v. Southern California Gas Co., (2009) 176 Cal.App.4th 591, 597-98, which in turn relied on Witkin for the principle that the plaintiff should not be allowed to bypass a demurrer by suppressing facts that the court will judicially notice. 42 Cal.App.4th at 598. For this reason, false allegations of fact that are inconsistent with facts subject to judicial notice may be disregarded. Id. Gong then relied on Fowler, *supra*, 42 Cal.App.4th at 1752, for the proposition that the public entity may ask the court to judicially notice the fact that the entity's records do not show Claims Act compliance as alleged in the plaintiff's complaint. But the judicial notice in Fowler was the fact that the agency had no claim from the plaintiff in its records. Id. For purposes of judicial notice, the fact that the official records do not reflect any claim differs from considering the contents of a claim that actually was made. A search of an agency's records is at least arguably an official record under Evid. Code section 452(c); the actual claim is not.

The court recognizes that some courts, including appellate courts, are lenient in permitting an agency to obtain judicial notice of a record that contradicts the facts in a complaint. The policy reason used by Witkin that the plaintiff should not be allowed to suppress facts that would subject the complaint to a demurrer support this leniency. But the court believes that judicial notice under Evid. Code section 452 should be neutrally applied without regard to the reason it is submitted. If a plaintiff alleges facts that are inconsistent with documents in his or her possession that are not attached as exhibits to the complaint, then the claim will ultimately fail and he or she may be subject to sanctions under CCP section 128.5 or 128.7. But the court will not judicially notice the claims and responses between Butts and the City (Exs. A-D), which are not official acts. The requests are denied. *See* Evid. Code §452(c).

The City's entire demurrer is based on the assertion that Butts' two claims submitted to the City did not give notice of his Bane Act claim because they do not allege any coercive, threatening, or intimidating conduct by the City, and therefore the sixth cause of action against the City is barred pursuant to section 945.4. Dem. at 6; Reply at 5-6. Because the court declines to judicially notice Butts' two claims to the City, the demurrer must be overruled.

D. Conclusion

The demurrer is overruled. The City has 30 days to answer only. The fifth and sixth causes of action are ordered stayed as to all parties and will be reassigned to an I/C court after trial of the mandamus claims.

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