

Filed By: Donovan, Denis M.

Appearance required.

Plaintiff should be prepared to present evidentiary or testimonial evidence of special and general damages as set forth in the statement of damages.

Item 10 **2011-00110727-CU-OR**

Richard P. Nix vs. Ocwen Loan Servicing, LLC

Nature of Proceeding: Motion to Dismiss

Filed By: Watts, Joshua D.

Ocwen Loan Servicing LLC's et al's Motion to Dismiss for failure to amend the complaint after the demurrer was sustained with leave to amend, is unopposed and is granted. CCP 581(f)(2).

On September 7, 2012, a motion to dismiss was denied without prejudice for lack of sufficient notice. Moving party has now provided adequate notice.

On July 23, 2012, the Court sustained the demurrer of Ocwen Loan Servicing, LLC, HomeEq Servicing, and MERS to the Complaint, with leave to amend. Plaintiff alleged a single cause of action for Quiet Title. The Court gave plaintiff until August 2, 2012 to file an amended complaint. No amended complaint has been filed. [CCP §581(f)(2)]

The prevailing parties shall prepare a formal order of dismissal for these parties for the Court's signature pursuant to C.R.C. 3.1312.

Item 11 **2012-00120431-CU-CL**

Northern California Collection vs. Vijay J. Kumar

Nature of Proceeding: Writ of Attachment

Filed By: LeLievre, Andre J.

This matter is dropped from calendar.

Item 12 **2012-00121540-CU-BC**

Clyde Orff vs. Ford Motor Company

Nature of Proceeding: Motion for Protective Order

Filed By: Erskine, Scott M.

This matter is continued to 11/28/2012 at 02:00PM in this department.

Item 13 **2012-00122300-CU-EI**

State of California vs. Douglas D. Allen

Nature of Proceeding: Motion for Order for Possession

Filed By: Feser Jr., John M.

Plaintiff's Motion for Order of Possession is denied, without prejudice.

The Department of Water Resources ("DWR") has filed this action in eminent domain seeking to acquire interests in real property that are necessary for state water and dam purposes to be acquired under California Water Code sections 250 and 11580. DWR alleges it is authorized to acquire permanent and temporary easements on the property for a proposed project for state water and dam purposes in connection with the Bay Delta Conservation Plan ("BDCP") and water conveyance alternatives in the Sacramento-Sacramento Delta. The BDCP includes a "water conveyance system," commonly referred to as a "peripheral" canal or tunnel, designed to convey waters that normally flow through the Delta, in an "isolated" system that bypasses the Delta and connects directly to pumps near Tracy for conveyance to Southern California.

DWR seeks permanent non-exclusive easements, temporary construction easements, temporary access easements, and rights of way upon, over, and across 26 parcels of real property located in Sacramento County, together with all improvements situated thereon and with all rights appurtenant thereto. (Complaint, ¶ 7) The purpose of the easements is to perform drilling of soil samples. The Complaint alleges in ¶ 9 that each defendant named appears of record or is known by DWR to have or claim an interest in one or more of the Subject Properties. Attached to the Complaint as Exhibits 1A through 26A are the names of each fee owner associated with the property. No other persons who hold an interest of record are named in the Complaint. (See Complaint Exhibits 1A - 26A, page one of each exhibit)

In order to acquire private property by eminent domain, the condemning agency must comply with the requirements of the Eminent Domain Law: "Except as otherwise specifically provided by statute, the power of eminent domain may be exercised only as provided in this title." (Code Civ. Proc. § 1230.020)

Although DWR alleges that "Each defendant named appears of record or is known by DWR to have or claim an interest in one or more of the Subject Properties," DWR does not allege, as it should have, that DWR has named each owner that appears of record or is known by DWR to have or claim an interest. CCP 1250.220 mandates that the plaintiff **shall** name as defendants, by their real names, **those persons who appear of record or are known by the plaintiff to have or claim an interest in the property described in the complaint.** (emphasis added) CCP 1235.060 provides that "shall" is mandatory and "may" is permissive. The directive in CCP 1250.220(a) requiring naming of all persons who appear of record in the complaint is mandatory, not discretionary. It requires condemning agencies to first identify the recorded interests in the subject property (usually by way of a title report and then name "by their real names" those parties whose interests are "of record." The statute does not give the condemnor the discretion to decide whether to name or not name a particular owner of an easement, lien or leasehold based upon the agency's speculation as to whether that owner might or might not be affected by the project. The term "interest," when used with reference to property, "includes any right, title, or estate in property." (Code Civ. Proc. § 1235.125) The Law Revision Comment to Section 1235.125 explains that under this section the term "interest" "is broadly defined to include **all interests in property of whatever character or extent.**"

In this case, DWR named only the fee owners in the Complaint. It failed to name the owners of easements and other interests of record, as specifically identified by the title reports for the subject properties. Defendants have set forth in their opposition the numerous other parties who hold recorded interests in each parcel who were not named in the Complaint (See pages 7 - 28, opposing points and authorities) Because not all the proper defendants were named, DWR has not served the required owners with notice of this motion.

The due process concerns behind the requirement that record owners of interests in the property be named would be thwarted if DWR were allowed to act in disregard of the statute. DWR seeks to acquire the property interests at issue (permanent and temporary easements) and complete its proposed entries and geotechnical activities on the affected properties. The Court cannot assume that persons without a fee interest would have no opposition to this motion. The Court rejects the argument that defendants do not have standing to raise lack of notice to the other record owners. The defendants are asserting their own legal rights and interests, as DWR is seeking to condemn an interest in their property. In addition, the fee owners may be exposed to liability if other record owners are not named. Defendants give the example that the proposed drilling and other geotechnical activities could implicate the interests of the oil and gas lessees, who presumably have detailed knowledge of the location of oil and gas pipelines. Potential damage to the property could cause a "hardship" to those other than fee owners, who have a right to oppose this motion. The Court notes that some of the properties are leased by wine companies such as J. Lohr Vineyards. Appropriate inquiry demands be asked: Are there vines on the property? Would the planned geotechnical activities interfere with the harvest, or plantings? There is no way to know unless all record owners are provided notice of this motion.

The possession provisions of the eminent domain law provide: "At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to article 1(Commencing with section 1255.010) an amount that satisfies the requirements of that article. CCP ¶ 1255.410.(a). The motion shall include the statement: "You have the right to oppose this motion for an order of possession of your property." A motion may be opposed based on a "hardship." CCP 1255.410(a).

The plaintiff **shall** serve the motion on the record owner of the property and on the occupants, if any. CCP 1255.410(b). The term "property" includes real and personal property and any interest therein. CCP 1235.170. Therefore, the phrase "record owner of the property" includes any record owner of a non-fee interest in the property, e.g. an owner of a recorded easement or a recorded lease. There is no special narrowing or restriction of the term "record owner" as used in section 1255.410(b).

CCP 1255.450(a) requires that the plaintiff shall serve a copy of the order for possession issued under Section 1255.410 on the record owner of the property and on the occupants, if any. "Record owner," as used in Section 1255.450, subd. (b), means "the owner of the legal or equitable title to the fee or any lesser interest in property as shown by recorded deeds or other recorded instruments." (Code Civ. Proc. § 1255.450, subd. (a), emphasis added.) DWR argues that the additional language defining record owner in this section necessarily limits the definition in 1255.410 to fee

owners. The Court rejects plaintiff's argument that the more expanded definition of who is to be served with the order of possession in section 1255.450 means that only the fee owners must be served with the motion for possession. A fundamental principal of due process requires that the persons who are served with an order on a motion must be under the court's jurisdiction and have been provided notice that an adverse party was seeking that order. Moreover, this interpretation would eviscerate the definition of "property" set forth in Section 1235.170.

Defendants' additional arguments challenging the possession, including that DWR has not established the requirements of Water Code §§ 250 and 11580, are not being considered at this time in light of the procedural defect of lack of notice to necessary parties.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 14 **2012-00126628-CU-OR**

Angela Gail Hopkins vs. Tena Camille Ross

Nature of Proceeding: Motion for Interlocutory Judgment for Partition

Filed By: Falcone, James J.

Plaintiffs' Motion for Interlocutory Judgment for Partition is unopposed but is dropped from calendar, without prejudice.

CCMS does not reflect that the required notice of lis pendens has been recorded. CCP 872.250. Pursuant to 872.250, if the required notice is not recorded, the court is required to stay the action until the notice is recorded. In this regard the Court would note that immediately on filing the complaint for partition, the plaintiff must record a notice of the pendency of the action (lis pendens) in the office of the county recorder of each county in which any real property described in the complaint is located [Code Civ. Proc. § 872.250]. The recording of the lis pendens is a critical step in the partition action. Prompt recording enables the Court to deal with title with certainty. From the time of filing the lis pendens, all persons are deemed to have notice of that action as to the property described in the notice.

This action is stayed pending the filing of the notice of lis pendens.

Even if such notice were recorded, the motion is denied for the additional reasons that the court will require notice to defendant of this motion, and on the ground that plaintiffs have not complied with CCP 872.530.

Plaintiffs Angela Gail Hopkins ("Gail"), her husband Steven C. Hopkins, and Lisa Melanie Ianni filed this partition action and seek an order to sell the subject property. They allege in their verified complaint that Gail and Steven, Lisa, and defendant Tena Camille Ross, and her deceased husband, Lee F. Ross, are the sole owners of a 1/3 interest in the fee simple title of certain property located at 7226 Geowood Way, Citrus Heights, CA, in Sacramento County, APN: 211-0062-082-0000. This allegation that all of the parties together own 1/3 interest appears to be an error, as the Exhibit attached appears to show that the property is owned as tenants in common with Gail and