

15 TENTATIVE RULING 1:30 p.m., Thursday, September 30, 2021

OSCAR DE LA TORRE v. CITY OF SANTA MONICA, et al. [21STCV08597]

DEMURRER OF DEFENDANT CITY OF SANTA MONICA TO PLAINTIFF'S VERIFIED 2AC

MEET & CONFER: Complies with CCP 430.41

**BACKGROUND: Action for declaratory relief; violation of Brown Act
CONT'D TIMELINE:**

7/23/21: the Court ruled on moving Defendant's demurrer to the FAC, sustaining w/leave re C/A 1 [decl. relief] and overruling as to C/A 2 [violation of the Brown Act]

8/10/21: Plaintiffs filed their verified 2AC, again asserting 2 C/As:

1) declaratory relief; and

2) violation of the Ralph M. Brown Act - GC 54950

9/3/21: Moving defendant filed these general demurrers to C/As 1-2

RE THE GENERAL DEMURRERS OF DEFENDANT CITY OF SANTA MONICA TO CAUSES OF ACTION 1-2 OF PLAINTIFFS' VERIFIED 2AC, THE COURT RULES AS FOLLOWS:

C/A 1 [DECLARATORY RELIEF]: OVERRULED.

The parties raise the same arguments, somewhat amplified, presented by the demurrer that the Court sustained on July 23, 2021. The Court, however, is of the view that it sustained the earlier demurrer improvidently. In an action seeking declaratory relief, the first issue is whether there is an actual controversy for the court to rule upon. The City, in this case, argues that a city council as a matter of law has the authority to determine if an elected councilmember has a common law conflict of interest with respect to a public issue; and, if it so decides, to disqualify that council member from participating in closed sessions of the city council to consider matters involving that interest. The issue at stake here is CVRA litigation now on appeal in which the City is a defendant. Plaintiff De La Torre does not have a personal stake in that litigation but voices a point of view that is contrary to the majority of the councilmembers. These differing viewpoints are to be resolved in a fair political process. The City's actions to exclude the participation of a councilmember who campaigned in support of the plaintiffs in the CVRA litigation thwarts the political process and raises an actual controversy for judicial determination. The Court will **OVERRULE** the City's demurrer to the first

cause of action.

NOTE: To the extent Defendant argues that Plaintiff SERNA “lacks standing to challenge the disqualification”: The Court declines to rule on this issue. First, the Court finds that the demurrer itself is procedurally improper, as the Notice of Demurrer says nothing about a special demurrer grounded on CCP 430.10(b) [which goes to “lack of legal capacity to sue” but which has been interpreted by our appellate court to mean lack of standing]. Second, Plaintiffs’ argument to the effect that this is essentially a piecemeal demurrer, because the issue could have been raised by the prior demurrer, has merit. The Court does not entertain piecemeal demurrers [see, e.g., CCP 430.41]. The arguments in the Reply, that the issue is never waived and that it could be raised by way of a motion for JOP, are unpersuasive. The Common Cause case, cited in fn.2 of the Reply, states only that the issue may be raised at any time; it doesn’t specify the *manner* in which the issue may be raised. As for Defendant’s argument that having to raise the issue by way of a motion for JOP would cause Defendant to expend unnecessary time and resources, the Court agrees; however, to accept that argument would mean that every late demurrer should simply be accepted without concern as to timeliness. If that were true, there would be no need for the JOP procedure.

C/A 2 [VIOLATION OF THE RALPH M. BROWN ACT - GOV’T CODE 54950]: OVERRULED. As the Court stated in re the prior demurrer, Plaintiff’s 2AC asserts that the Brown Act [Government Code § 54953] requires, with only specified exceptions, that “all persons shall be permitted to attend” meetings of all or a majority of any city council, and that by excluding him from future Council meetings, defendant CITY threatens to violate the Act. Plaintiff cites Gov. Code, § 54960, subdivision (a), for the proposition that “any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of [the Brown Act] by members of the legislative body....”; and §54960.1, subdivision (a), for the proposition that “any interested person” may “commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of [specified sections of the Brown Act] is null and void under this section.”

Re the prior demurrer, Defendant raised only two arguments: a) Plaintiff lacks standing to assert this cause of action; and b) Plaintiff “failed to exhaust all remedies” before bringing his claim. The Court’s ruling addressed those arguments, and Defendant didn’t seek reconsideration or appeal that ruling. Here, Defendant concedes that Plaintiffs’ 2AC isn’t materially different from the FAC; however, Defendant asks the Court to

revisit its prior ruling. The Court declines that invitation.

Re lack of standing to sue: The Court stands by the comments it made re the prior ruling. [Also see above re the issue of Plaintiff Serna's standing - this issue should have been, but wasn't, raised by way of a special demurrer.] In essence, the Court found that Plaintiff qualifies as an "interested person" because he alleges that he has a personal stake in the relief sought; and that there was no exhaustion requirement as to future meetings of the Council. Defendant's argument that Plaintiff isn't an "interested person" is essentially unchanged from the prior demurrer. Defendant doesn't point to anything in the 2AC that would cause the Court to change its position in this regard. Defendant's argument that C/A 2 fails to the extent Plaintiff is challenging the Council's "past action" is unpersuasive, as one cannot demur to part of a cause of action, and Plaintiffs have taken the position that they aren't challenging any past action of the Council. Defendant's argument based on an Attorney General opinion stating that where there is a common law conflict of interest, an official "may not take part either in the discussion nor in a vote on the relevant matter" isn't helpful, as it doesn't say anything about whether the official can attend without participating in the discussion or voting. As for the considerations raised in *Hamilton v Town of Los Gatos* (1989) 213 CA3d 1050 (re not permitting a "financially interested" council member to attend a closed session meeting because it might give rise to an appearance of impropriety, or might have an influence on other council members): Defendant is free to raise that point in a dispositive motion or before the trier of fact; however, it doesn't support a ruling sustaining the demurrer.

MP is to serve notice of ruling. This TR shall be the order of the Court, unless changed at the hearing, and shall by this reference be incorporated into the Minute Order. TR e-mailed to counsel at 1:30 p.m., 9-30-21