BOARD OF HARBOR COMMISSIONERS
CITY OF SANTA BARBARA
MINUTES
Regular Monthly Meeting
March 19, 2015
City Council Chambers - City Hall 6:30 p.m.

CALL TO ORDER 6:30 p.m.

ROLL CALL

Commissioners Present
Bill Spicer, Chair
Cory Bantilan
Betsy Cramer
Dennis Power
Helene Webb

Staff Present
Ariel Calonne, City Attorney
Scott Riedman, Waterfront Director
Brian Bosse, Business Manager
Sarah Knecht, Assistant City Attorney
Mick Kronman, Harbor Operations Manager
Karl Treiberg, Facilities Manager
Jeanette Prusinski, Commission Secretary

Commissioners Absent
Jim Sloan, Vice Chair
Stephen MacIntosh

CHANGES TO THE AGENDA – None

PUBLIC COMMENT – None

CONSENT CALENDAR

1. Approval of the Minutes

Moved RECOMMENDATION: That Harbor Commission waive further reading and approve the Minutes from the Regular Meeting of February 19, 2015.
Cory Bantilan/Betsy Cramer 5-0

DEPARTMENT UPDATE

2. Director's Report

- Council Actions
- Tentative Agenda Items for the April Meeting

3. Business Services Report

- Parking Changes on Stearns Wharf
- Request for Proposal Process for 117-G Harbor Way – Update
- Automatic Payment Service for Slip Fees

4. Facilities Management Report

- Federal Channel Dredging
- Marina One Replacement Project – Phase 5 Construction
- Marina Two Redecking Project

5. Harbor Operations Report

- Panga Interdiction

CONTINUED ITEMS

6. Appeal of Termination of Slip Permit 4-A-021, Mr. Richard Smith (Continued from February 19, 2015)

Mr. Kronman gave the staff report for Harbor Commission to consider Mr. Richard Smith's appeal of a slip permit termination for berth 4-A-021 in Santa Barbara Harbor.

Speakers:

- Ariel Calonne: City of Santa Barbara City Attorney, advising on behalf of the Harbor Commission's interest.
- Sarah Knecht: City of Santa Barbara Assistant City Attorney, spoke on behalf of Waterfront Department Staff's interest.
- David Tappeiner: Fell, Marking, Abkin, Montgomery, Granet & Raney LLP, spoke on behalf of Mr. Richard Smith. Submitted three documents:
    1. Copy of Unsecured 2014-2015 Property Tax Statement
    2. Smith V. Municipal Court, 202 Cal.App.3d 685
    3. 5 Cal. Real Est. Digest 3d Waters 5. Ownership and nature, Waters and Watercourses
- Mario Geary: Spoke to the truth of his actions illegally subletting as well as conducting illegal charters.

Moved A. Uphold the termination.
Bill Spicer/ Cory Bantilan 5-0

RECESS – Chair Spicer recessed the meeting from 7:35 p.m. to 7:45 p.m.

NEW BUSINESS

7. Fiscal Year 2016 and 2017 Operating Budget Recommendation

Mr. Bosse presented the Waterfront Departments Fiscal Year 2016 and Fiscal Year 2017 budget submittal.

<u>No Action Taken on B due to a lack of a quorum. Recommend approval of a $25 per linear foot slip transfer fee increase in Fiscal Year 2016 and Fiscal Year 2017 on all slip categories except 20 and 25 foot slips;</u>
Recused – Dennis Power and Helene Webb

Moved C. Recommend approval of a 2% slip fee increase in Fiscal Year 2016 and Fiscal Year 2017;
Dennis Power/Helene Webb 5-0

Moved D. Recommend approval of a $5 increase to the cost of Annual Waterfront Parking Permits;
Dennis Power/Helene Webb 4-1
No – Betsy Cramer

Moved E. Recommend approval of a $0.10 per foot increase in the Visitor Slip Fee;
Dennis Power/Helene Webb 5-0

Moved F. Recommend the establishment of a Harbor Patrol Vessel Replacement Fund;
Dennis Power/Helene Webb 5-0

Moved G. Forward a recommendation to City Council for approval of the Waterfront Department's proposed Fiscal Year 2016 and Fiscal Year 2017 budgets and incorporation into the City budget process.
Dennis Power/Helene Webb 5-0

8. Commercial Fishing Slip Lottery – 1R028

Chair Spicer conducted a lottery for the purpose of assigning a slip permit for berth 1R028 in Santa Barbara Harbor, a designated Commercial Fishing Slip. Three names were drawn and ranked for assignment:

1. Ralegh Sharp
2. Morgan Castagnola
3. Tony Luna

COMMISSION/STAFF COMMUNICATIONS

Dennis Power attended the Sea Center Gala on Stearns Wharf. It was a beautiful, well-done event with no parking issues nor otherwise. The Museum and the Waterfront Department collaborated well; the event was flawless and a lot of fun for the participants.

ADJOURNMENT

Chair Spicer Moved ADJOURNMENT at 8:30 p.m.
Unanimous Roll Call Vote 5-0

SMITH V. HARBOR COMMISSION
APPEAL OF SLIP TERMINATION
MARCH 19, 2015

EXHIBITS:

1. Copy of Unsecured 2014-2015 Property Tax Statement.
2. Copy of Smith v. Municipal Court, 202 Cal.App.3d 685.

March 19, 2015
Harbor Commission Minutes

HARRY E. HAGEN, CPA
TREASURER-TAX COLLECTOR
COUNTY OF SANTA BARBARA
FEDERAL TAX ID# 95-6002833

P.O. BOX 579 SANTA BARBARA, CA 93102-0579
(805)568-2920 SANTA BARBARA
(805)346-8330 SANTA MARIA

UNS
PRO
FOR

BILL NUMBER	ASSESSEE ON JANUARY 1ST LIEN DATE	Unsecured Property Number
2014-2-00014472-00	SMITH RICHARD	4a21 -001-2

TAX RATE AREA NUMBER	TAX RATE PERCENT
002-042	1.04840

AS THE OWNER ON JANUARY 1st, THIS IS YOUR RESPONSIBILITY. SALE OR DISPOSAL DOES NOT RELIEVE THIS OBLIGATION.

MAIL TO

4a210012 201420001447200- UNSEC
SMITH RICHARD
5516 ARMITOS AVE #66
GOLETA CA 93117

DESCRIPTION OF PROPERTY

C - Harbor Slip
HARBOR 4-A-21
SANTA BARBARA CA

ASSESSED VALUE	
LAND/MINERAL RIGHTS	34,220
IMPROVEMENTS	3,799
PERSONAL PROPERTY	0
TRADE FIXTURES	0
GROSS TOTAL	38,019
HOME OWNERS EXEMPTION	0
OTHER EXEMPTION	0
NET TOTAL	38,019

TAX AMOUNTS	
BASIC PROPERTY TAX	398.59
SPECIAL DISTRICTS	0.00
FIXED CHARGES	0.00
TOTAL TAX	398.59
10% DELINQUENT PENALTY	0.00
COST	0.00
1.5% MONTHLY PENALTY	0.00
LESS APPLIED PAYMENTS	398.59
TOTAL TAXES DUE	0.00

DELINQUENT PENALTIES ADDED IF NOT PAID BY 09/02/2014

TAX DISTRIBUTION BY AGENCY		AMOUNT
BASIC PROPERTY TAXES		
0000 Basic 1% (Prop.13/AB8) Taxes	568-2124	$380.19
8251 SB Unified High Bond 2000	963-4338	$4.94
8252 SB Unified Elem Bond 1995	963-4338	$0.72
8254 SB Unified High Bond 2010	963-4338	$2.65
8255 SB Unified Elem Bond 1998	963-4338	$4.38
8256 SB Unified Elem Bond 2010	963-4338	$2.48
9621 SBCC Bond 2008	965-0581	$3.23
TOTAL BASIC PROPERTY TAXES		$398.59
TOTAL TAXES		$398.59

TAX DISTRIBUTION BY AGENCY	AMOUNT
ALL DELINQUENT BILLS ARE SUBJECT TO A $50.00 COLLECTION FEE IN ADDITION TO LATE PENALTIES.	

2014-2015

UNSECURED PROPERTY TAX STATEMENT

INSTALLMENT PAID

TOTAL TAX	398.59
10% DELINQUENT PENALTY	0.00
COST	0.00
1.5% MONTHLY PENALTY	0.00
FEES	0.00
LESS APPLIED PAYMENTS	398.59
TOTAL TAXES DUE	0.00

WHEN PAYING , DETACH THIS STUB
RETURN THIS STUB WITH YOUR REMITTANCE

SMITH RICHARD
5516 ARMITOS AVE #66
GOLETA CA 93117

PAYMENT STUB NUMBER
2014-2014-2-00014472-00-1
PROPERTY NUMBER
4a210012-012-2

PAY ONLINE: WWW.SBTAXES.ORG

MAKE PAYMENT TO:

HARRY E. HAGEN
TREASURER-TAX COLLECTOR
COUNTY OF SANTA BARBARA
P.O. BOX 579
SANTA BARBARA, CA 93102-0579

DELINQUENT PENALTIES ADDED IF NOT PAID BY 09/02/2014

CHECK THIS BOX FOR ADDRESS CHANGES ON REVERSE

0101201420142000144720012014090200000000000000000000089854

Attachment #1

March 19, 2015
Harbor Commission Minutes

Property	Property Type	Current Property Address	Property Remarks	Favorites	Total Due
4a21 -001-2	Unsecured	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	None	Add	$0.00

Bills | Taxes & Values | Payments | Map | My Notes | My Property Inquiries | Supplemental Estimator

Menu	Date	Bill	Year	Property Address	First Installment	Second Installment
Paid Bills						
Menu	06/19/2014	2014-2-00014472-00 Unsecured	2014	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $398.59 on 08/29/2014	None
Menu	06/20/2013	2013-2-00014553-00 Unsecured	2013	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $393.49 on 08/26/2013	None
Menu	06/22/2012	2012-2-00014714-00 Unsecured	2012	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $384.47 on 08/16/2012	None
Menu	06/15/2011	2011-2-00015024-00 Unsecured	2011	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $376.48 on 08/25/2011	None
Menu	06/17/2010	2010-2-00015316-00 Unsecured	2010	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $373.68 on 08/05/2010	None
Menu	06/17/2009	2009-2-00015614-00 Unsecured	2009	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $374.51 on 08/27/2009	None
Menu	06/20/2008	2008-2-00016020-00 Unsecured	2008	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $364.16 on 07/28/2008	None
Menu	06/14/2007	2007-2-00016405-00 Unsecured	2007	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $357.81 on 08/23/2007	None
Menu	06/19/2006	2006-2-00016146-00 Unsecured	2006	SMITH RICHARD HARBOR 4-A-21 SANTA BARBARA CA	Paid $349.85 on 08/25/2006	None

Attachment #1

March 19, 2015
Harbor Commission Minutes

202 Cal.App.3d 685, 245 Cal.Rptr. 300

KENT SMITH, Petitioner,
v.
THE MUNICIPAL COURT FOR THE SAN MATEO COUNTY JUDICIAL DISTRICT OF SAN MATEO COUNTY, Respondent; TMI GROWTH PROPERTIES '83, Real Party in Interest

No. A040446.
Court of Appeal, First District, Division 5, California.
Mar 25, 1988.

SUMMARY

The lessee of a boat slip in a marina filed a writ petition after its motion to quash a five-day unlawful detainer summons was denied. The motion to quash was based on the ground that the unlawful detainer action did not involve real property and thus the municipal court's jurisdiction could not be invoked by the summons. The Court of Appeal denied the petition, holding that the occupancy of a rented boat slip in navigable waters amounts to an occupancy of real property for purposes of unlawful detainer. (Opinion by Low, P. J., with King and Haning, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

([1a], [1b], [1c])
Forcible Entry and Detainer § 5--Unlawful Entry and Detainer--Navigable Water as Real Property.
The occupancy of a rental boat slip in navigable waters amounts to an occupancy of real property for purposes of unlawful detainer. Thus, unlawful detainer was available as a remedy to a company that operated a marina under a 20-year grant of authority from the county pursuant to Harb. & Nav. Code, § 4000 (county board of supervisors may grant authority for construction of wharf with license to take tolls), and that sought to evict the lessee of a boat slip after a dispute arose over charges due under the rental agreement.

([2])
Forcible Entry and Detainer § 5--Unlawful Entry and Detainer.
Unlawful detainer actions are to be narrowly construed because unlawful detainer is a statutory proceeding and is governed solely by the provisions of the statute creating it. Because it affords the defendant fewer procedural entitlements, the plaintiff must clearly bring itself within the purview of the unlawful detainer statutes.

[See **Cal.Jur.3d (Rev),** Ejectment and Related Remedies, § 105.]

([3])
Waters § 5--Ownership and Nature.
Water in its natural state is a part of the land, and therefore real property.

[See **Am.Jur.2d,** Waters, § 1.]

([4])
Waters § 102--Navigable Waters and Tidelands--Public Trust.
The state's navigable waterways and their underlying beds are owned by the state in trust for the public.

COUNSEL
Jon R. Parsons for Petitioner.
No appearance for Respondent.
Douglas E. Carey for Real Party in Interest.

LOW, P. J.

In this case we hold that a rented boat slip in a marina is "real property" for purposes of unlawful detainer.

Petitioner Kent Smith, a Redwood City boat user, is defendant in an unlawful detainer action brought by the Peninsula Marina through its operator, real party in interest TMI Growth Properties '83 (TMI). TMI seeks to evict Smith and his 36-foot sailboat, the *Solaris*, from a rented boat slip in the marina. Smith moved to quash the five-day unlawful detainer summons on the ground that the action did not involve "real property" and the court's jurisdiction could not be invoked by an unlawful detainer summons. The municipal court denied the motion, and the superior court denied Smith's petition for writ of mandate. Smith filed this petition seeking "second-tier" writ review under Code of Civil Procedure section 904.1, subdivision (a)(4).

Because the issue appeared novel and Smith would have

Attachment #2

mooted his jurisdictional challenge by responding to the summons, we stayed the ***687** unlawful detainer proceedings and requested opposition from real party. We have reviewed the matter under Code of Civil Procedure section 904.1 because the question presented appears to be of first impression and of statewide importance. We conclude Smith's position is without merit and deny the petition.

I

The Peninsula Marina is situated in navigable waters bordering San Francisco Bay but within the political boundaries of San Mateo County. TMI operates the marina under a 20-year grant of authority from the San Mateo County Board of Supervisors pursuant to Harbors and Navigation Code section 4000. This statute provides that "[t]he board of supervisors of any county may, upon approval of the Public Utilities Commission, grant authority to any person to construct a wharf, chute, or pier, on any lands bordering on any navigable bay, lake, inlet, creek, slough, or arm of the sea, situated in or bounding the county, with a license to take tolls for its use for the term of 20 years." In essence, TMI holds a 20-year license under which it enjoys the right to construct wharves, charge for their use and control and maintain the area encompassed by the grant.

The marina rents boat slips and provides its nautical tenants with electricity, fresh water, parking spaces and access to their boats. According to Smith, the marina does not provide septic facilities, gas, or other utilities. When it occupies its rented boat slip, Smith's boat is tied to the wharf by ropes which are easily loosened and not permanently attached to the wharf. It is undisputed that the boat, when berthed, floats on navigable waters.

Smith's boat slip rental is governed by a contract between Smith and TMI, entitled "Peninsula Marina Anchorage Rental Agreement," which recites that it is "for the rental of space to yacht owners and operators." Under the terms of the agreement, Smith agreed "to rent ... space"; to pay TMI a "'monthly rental'" and "security deposit" and abide by "covenants and conditions"; to not sublet the space without written consent; to allow entry of TMI onto his boat for "emergency service" and "at reasonable times for periodic inspections to determine the safety and condition" of the vessel; and to obey all posted rules and regulations of the marina. Either party may terminate the agreement at any time with 30 days written notice.

A dispute arose over charges due under the agreement. TMI attempted to foreclose on the statutory liens for nonpayment of dockage fees (***688** Harb. & Nav. Code, §§ 491, 501).[1] TMI gave the requisite 30-day notice that the rental agreement was terminated, and filed a breach of contract action based on the violation of the 30-day notice and quit provision of the lease and an unlawful detainer action for eviction using the 5-day summons.

Smith moved to quash the five-day summons on two grounds: (1) that Smith was only a "licensee" and thus not subject to unlawful detainer; and (2) that unlawful detainer was not an available remedy because the rented boat slip was not "real property." The municipal court denied the motion, ruling licensees were governed by unlawful detainer (Code Civ. Proc., § 1161) and "the marina ... constitutes real property with respect to [TMI's] occupancy and use of land. ..."

Smith then filed a petition for writ of mandate in superior court. After issuing an alternative writ and holding a hearing, at which Smith conceded the licensee issue, the superior court denied the petition. Smith, refusing to abandon ship, sought writ relief in this court.

II

Both parties agree that if TMI cannot state a cause of action in unlawful detainer, its five-day summons cannot vest jurisdiction in the municipal court (*Greene v. Municipal Court* (1975) 51 Cal.App.3d 446, 451-452 [124 Cal.Rptr. 139]), and a thirty-day summons must issue (*Martin v. Pacific Southwest Royalties* (1940) 41 Cal.App.2d 161, 167 [106 P.2d 443]). They further agree that Smith had to raise his objection to the court's jurisdiction by a motion to quash the summons (*Tresway Aero, Inc. v. Superior Court* (1971) 5 Cal.3d 431, 435 [96 Cal.Rptr. 571, 487 P.2d 1211]; see Code Civ. Proc., § 412.20), because a demurrer would have constituted a general appearance and waived the summons's jurisdictional defect (*Delta Imports, Inc. v. Municipal Court* (1983) 146 Cal.App.3d 1033, 1036 [194 Cal.Rptr. 685]). ([1a]) Thus, this case clearly presents the substantive issue whether, under current law, a marina may use unlawful detainer to evict a defaulting renter of a boat slip.

Smith contends unlawful detainer is not available because the rental of a defined space of surface water is not a rental of "real property." ***689** ([2]) First, Smith argues that unlawful detainer actions are to be narrowly construed because unlawful detainer "is a statutory proceeding and is governed solely by the provisions of the statute creating it." (*Fifth & Broadway Partnership v. Kimny, Inc.* (1980) 102 Cal.App.3d 195, 200 [162 Cal.Rptr. 271, 7 A.L.R.4th 580].) Because unlawful detainer affords the defendant fewer procedural entitlements (*Markham v. Fralick*

WestlawNext © 2015 Thomson Reuters. No claim to original U.S. Government Works.

(1934) 2 Cal.2d 221, 227 [39 P.2d 804]), the plaintiff must clearly bring itself within the purview of the unlawful detainer statutes. (*Baugh* v. *Consumers Associates, Ltd.* (1966) 241 Cal.App.2d 672, 674-675 [50 Cal.Rptr. 822]; *Horton-Howard v. Payton* (1919) 44 Cal.App. 108, 112 [186 P. 167].)

Smith's general statements of law are valid but do little more than state the given. The strict construction of the unlawful detainer statutes does not automatically award Smith the victory. We have concluded that expansive interpretation is not needed to reach the holding that a marina slip is within recognized definitions of "real property."

Smith correctly notes that the unlawful detainer statutes apply only to an occupant of real property (Code Civ. Proc., § 1161) or to a holdover tenant in a manufactured home or mobilehome as those terms are statutorily defined (Code Civ. Proc., § 1161a, subd. (a)). Noting, again correctly, that his *boat* does not fit the definition of a manufactured home or a mobile home, Smith argues that the remaining "question before this Court is whether a navigable boat temporarily tied to and docked at a wharf constitutes occupancy of 'real property'."

([1b]) Smith has charted the wrong course. The issue is not whether the *vessel* is real property because it is tied to a land-based wharf, but whether the rental of *the space on the water* is a rental of real property. The term "real property" is defined at several places in the Code of Civil Procedure. Code of Civil Procedure section 17 defines the term as "coextensive with lands, tenements, and hereditaments." Code of Civil Procedure sections 481.203 and 680.320 define the term to "[include] any right in real property, including, but not limited to, a leasehold interest in real property." The Civil Code is more explicit. "Property is either: [¶] 1. Real or immovable; or, [¶] 2. Personal or movable." (Civ. Code, § 657; see also Code Civ. Proc., §§ 481.195, 680.310.) Property is defined as "the thing of which there may be ownership" (Civ. Code, § 654) - thus, if something can be owned and cannot be moved, like the surface of a body of navigable water, it constitutes "real property." Smith's leasehold interest in his boat slip would therefore seem to be an interest in real property, subject to unlawful detainer.

This logic finds support in the law of water ownership. ([3]) "Water in its natural state is a part of the land, and therefore *real property*." (3 Witkin, ***690** Summary of Cal. Law (8th ed. 1973) Personal Property, § 53, p. 1661.)

([4]) The state's navigable waterways and their underlying beds are owned by the state in trust for the public. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 258, fn. 6 [98 Cal.Rptr. 790, 491 P.2d 374]; *City of Oakland v. El Dorado T. Co.* (1940) 41 Cal.App.2d 320, 329 [106 P.2d 1000]; see *Coburn* v. *Ames* (1877) 52 Cal. 385, 398-399.)[2] By virtue of Harbors and Navigation Code section 4000, the state has seen fit to permit county boards of supervisors to grant licenses for wharf operations in navigable waters within or adjacent to the county. ([1c]) At least for unlawful detainer purposes, TMI stands in the place of the state as owner of the navigable waters of the marina and the underlying bed. Since the water on which Smith's boat rests is real property, TMI may employ unlawful detainer to remove tenants.[3]

Smith does not view the case in this light, but focuses his attention on TMI's position as owner of the *adjacent land* to which the wharf is attached. The crux of his argument is that the *wharf* is not real property because it is not "affixed" or "appurtenant" to land within the definition of Civil Code section 658. He relies heavily on *Coburn* v. *Ames, supra*, 52 Cal. 385, which appears to hold that a wharf attached to land is not so "affixed" or "appurtenant." Smith further argues that even if the wharf is real property, temporarily tying a boat to the wharf does not amount to "use or occupancy" of that property. Smith's reliance on *Coburn* is misplaced and his arguments misdirected. It is the ownership of the navigable water of the boat slip, not the wharf, which is the key factor in determining availability of unlawful detainer.

We conclude the occupancy of a rental boat slip in navigable waters amounts to an occupancy of real property for purposes of unlawful detainer. ***691** Contrary to Smith's concluding argument, our ruling does not permit a "mere" holder of a franchise to impede the "freedom of navigation." TMI holds a license under a grant from the Legislature, and its unlawful detainer action is not an impermissible infringement upon navigation but an available legal remedy against an allegedly defaulting tenant.

The petition for writ of mandate is denied. The stay heretofore imposed is dissolved.

King, J., and Haning, J., concurred. ***692**

Footnotes

1 Although TMI alleges the foreclosure action is still pending, Smith maintains the action was not successful: apparently the

WestlawNext © 2015 Thomson Reuters. No claim to original U.S. Government Works.

foreclosure law targets the boat's legal owner, and the *Solaris* is legally owned by Smith's bank. Whatever the status and scope of the foreclosure action, and the exact rights and responsibilities thereunder, lien foreclosure is a protracted procedure and is not intended to be an exclusive remedy. (See Harb. & Nav. Code, §§ 502, subd. (g), 503.) Furthermore, the rental agreement provides that "[t]he rights of [TMI] under this Lease shall be cumulative to all other rights or remedies which are or may be in the future conferred upon [TMI] ... by ... law."

2 Nonnavigable waters may be owned by virtue of the private ownership of the bed beneath the water: "The owner of submerged land, like the owner of dry land, owns also to the sky and to the depths: *Cujus est solum, ejus est usque ad coelum et ad inferos*." (*Steel Creek Development Corp. v. James* (1982) 58 N.C.App. 506 [294 S.E.2d 23, 27], fn. omitted; see generally, 78 Am.Jur.2d, Waters, §§ 44, 51, pp. 486-487, pp. 493-494.)

3 Smith somewhat obliquely argues that *Union Oil Co. v. Rideout* (1918) 38 Cal.App. 629 [177 P. 196], provides authority that a boat user and a marina cannot stand in a landlord-tenant relationship. *Union Oil* did not involve an eviction of a boat by a marina, but a suit by an oil company for damages to property allegedly caused by the owner of a boat docked at the San Francisco waterfront. In dicta, the court stated, "As to the contractual relation existing between the harbor commissioners and those to whom they let the privilege of docking their boats at the piers, while it is to be conceded that, in a strict sense, ... the relation of landlord and tenant does not exist between them [citation], still it cannot be doubted that, so long as the owners of boats have their vessels in dock at said piers, ... *they are nevertheless as much occupants of said piers as they would or could be if they were in the strictest sense tenants of said commissioners*." (*Id.*, at p. 636, italics added.) *Union Oil* is not compelling authority in Smith's favor, and the emphasized language would, if anything, support TMI.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

March 19, 2015
Harbor Commission Minutes

5 Cal. Real Est. Digest 3d Waters § 5

Miller & Starr California Real Estate Digest 3d
Database updated June 2014
Waters
I. Generally

Topic Summary

§ 5. Ownership and nature

West's Key Number Digest
West's Key Number Digest, Waters and Watercourses 41, 42, 51

California operates under a dual system of water rights that recognizes both the appropriation and riparian doctrines. The riparian doctrine confers on the owner of land contiguous to a watercourse the right to the reasonable and beneficial use of water on his or her land. The appropriation doctrine contemplates the diversion of water and applies to any taking of water for other than riparian or overlying uses. Both riparian and appropriative rights are usufructuary only and confer no right of private ownership in the watercourse. People v. Murrison, 101 Cal. App. 4th 349, 124 Cal. Rptr. 2d 68 (3d Dist. 2002), review denied, (Nov. 20, 2002).

The state's property interest in ground water (Wat. Code, § 102) is no less usufructuary than that of private ownership. Public waters may be duly used, regulated and controlled in the public interest. Aerojet-General Corp. v. Superior Court, 211 Cal. App. 3d 216, 258 Cal. Rptr. 684 (1st Dist. 1989).

All ownership of water in California is usufructuary; water rights do not relate to the ownership of water, but only to the right to its use. Aerojet-General Corp. v. Superior Court, 211 Cal. App. 3d 216, 258 Cal. Rptr. 684 (1st Dist. 1989).

The state's property interest in ground water (Wat. Code, § 102) is no less usufructuary than that of private ownership. Public waters may be duly used, regulated and controlled in the public interest. Aerojet-General Corp. v. Superior Court, 211 Cal. App. 3d 216, 258 Cal. Rptr. 684 (1st Dist. 1989).

Water in its natural state is a part of the land, and therefore real property. Smith v. Municipal Court, 202 Cal. App. 3d 685, 245 Cal. Rptr. 300 (1st Dist. 1988).

Once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation. United States v. State Water Resources Control Bd., 182 Cal. App. 3d 82, 227 Cal. Rptr. 161 (1st Dist. 1986).

Unlike real property rights, usufructuary water rights are limited and uncertain. The available supply of water is largely determined by natural forces. Riparians have no rights to a specific amount of water. Rather they enjoy as an incident of common ownership with other riparians on the stream a correlative share of the natural flow. They may be required to share expenses or inconveniences for the common good to enable all riparians to use the water. In contrast, limitations on appropriators are more visible, since appropriative rights are governed by the terms of the issued permit: the quantity of permitted water is specified together with other terms and conditions imposed by the Water Resources Control Board. Further, superimposed on these basic principles defining water rights is the overriding constitutional limitation of Cal. Const., art. X, § 2, that water be used as reasonably required for the beneficial use to be served. United States v. State Water Resources Control Bd., 182 Cal. App. 3d 82, 227 Cal. Rptr. 161 (1st Dist. 1986).

The law of water rights involves a hierarchy of priorities: riparian rights as a class have priority that must be satisfied before any appropriative rights are exercised. As among appropriators, the first in time is the first in right. In times of water shortage the junior rights-holder must reduce use even to the point of discontinuance before the next senior appropriative rights-holder must cut back at all. Any impairment of the rights of the senior appropriator constitutes an invasion of private rights for which a remedy lies at law and in equity. Since under Wat. Code, §§ 1450, 1455, priority of the issued permit is based upon the application date, most appropriative rights possessed by a federal water project, the applications of which largely preceded those of a state water project, had a higher priority than the rights of the state water project. United States

WestlawNext © 2015 Thomson Reuters. No claim to original U.S. Government Works.

Attachment #3

v. State Water Resources Control Bd., 182 Cal. App. 3d 82, 227 Cal. Rptr. 161 (1st Dist. 1986).

Water in its natural state is a part of the land, and therefore real property. When severed from the realty, reduced to possession, and placed in containers, it becomes personal property. Santa Clarita Water Co. v. Lyons, 161 Cal. App. 3d 450, 207 Cal. Rptr. 698 (2d Dist. 1984).

Water is not stationary, as are other natural deposits such as ore, and it may be replenished from its source unlike other natural deposits. Thus, the right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use. Hence, the cases do not speak of the ownership of water but only of the right to its use. Santa Clarita Water Co. v. Lyons, 161 Cal. App. 3d 450, 207 Cal. Rptr. 698 (2d Dist. 1984).

The right to flood land or to store water thereon may be appurtenant to ownership of water, considered as real property. Security Pac. Nat. Bank v. City of San Diego, 19 Cal. App. 3d 421, 97 Cal. Rptr. 61 (4th Dist. 1971).

Westlaw. © 2014 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.