

Not Reported in Cal.Rptr.2d, 2002 WL 1340955 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
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Court of Appeal, Second District, Division 3, California.
 HERMOSA BEACH STOP OIL COALITION et al.,
 Plaintiffs,
 v.
 CITY OF HERMOSA BEACH et al., Defendants and
 Appellants;
 WINDWARD ASSOCIATES et al., Real Parties in
 Interest and Appellants.
No. B147849.
(Los Angeles County Super. Ct. No. BC172546).

June 19, 2002.

Citizens group sought declaration that prohibition on oil drilling in city applied to oil lessee and lessee sued city for breach of contract, specific performance, and declaratory relief, after city passed resolution terminating oil lease agreement granting lessee right to drill for oil on city property. the Superior Court, Los Angeles County, No. BC172546, [Kurt J. Lewin](#), J., entered judgment in favor of city on lessee's cross-claim, and lessee appealed. The Court of Appeal, [Kitching](#), J., held that: (1) matter would be remanded due to procedural irregularities and fact that trial court did not have benefit of relevant appellate decision, and (2) on remand, trial court could consider any relevant and admissible evidence in addition to "certified" record filed by city.

Reversed and remanded.

West Headnotes

[11](#) Appeal and Error 30 ↪1073(1)

[30](#) Appeal and Error
[30XVI](#) Review
[30XVI\(J\)](#) Harmless Error
[30XVI\(J\)23](#) Judgment or Order
[30k1073](#) Judgment or Order
[30k1073\(1\)](#) k. In General. [Most Cited](#)

[Cases](#)

Declaratory Judgment 118A ↪395

[118A](#) Declaratory Judgment
[118AIII](#) Proceedings
[118AIII\(H\)](#) Appeal and Error
[118Ak392](#) Appeal and Error
[118Ak395](#) k. Determination and Disposition of Cause. [Most Cited Cases](#)
 Judgment in favor of city on oil lessee's claims for breach of contract, specific performance, and declaratory relief, based on city's passing resolution terminating oil lease agreement granting lessee right to drill for oil on city property, would be remanded, where judgment was based almost solely upon parties' briefing following status conference, without a motion for summary judgment or summary adjudication, and trial court did not have benefit of appellate decision finding that reinstatement of total ban on oil drilling within city, adopted through initiative process, did not constitute an unconstitutional impairment of parties' oil lease agreement.

[12](#) Appeal and Error 30 ↪1214

[30](#) Appeal and Error
[30XVII](#) Determination and Disposition of Cause
[30XVII\(F\)](#) Mandate and Proceedings in Lower Court
[30k1209](#) New Trial
[30k1214](#) k. Evidence. [Most Cited Cases](#)
 On remand of oil lessee's action against city for breach of contract to enforce contractual right under oil lease, trial court could, pursuant to its inherent discretion, consider any relevant and admissible evidence in addition to any administrative records or "certified" record filed by city.

APPEAL from a judgment of the Superior Court of Los Angeles County, [Kurt J. Lewin](#), Judge. Reversed and Remanded. Bright and Brown, [James S. Bright](#), [Maureen J. Bright](#), [John Quirk](#), and [Phillipa L. Altman](#) for Real Parties in Interest and Appellants Windward Associates and Macpherson Oil Company.

Richards, Watson & Gershon, [Rochelle Browne](#);

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[Michael Jenkins](#), City Attorney, for Defendants and Appellants City of Hermosa Beach and City Council of the City of Hermosa Beach.

INTRODUCTION

[KITCHING](#), J.

*1 Appellants, real parties in interest and cross-complainants Windward Associates and Macpherson Oil Company (collectively “appellant” or “Macpherson”) appeal from a judgment on Macpherson's cross-complaint against respondent, defendant and cross-defendant the City of Hermosa Beach (“respondent” or “the City”). Macpherson sued the City for breach of contract, specific performance and declaratory relief after the City passed Resolution No. 98-5950, which terminated Macpherson's oil lease agreement (the “lease”) with the City, pursuant to which Macpherson had contracted for the right to drill for oil on City property (the “Oil Project”).

The trial court's judgment on Macpherson's cross-complaint provided: (1) the City's adoption of Resolution No. 98-5950 unconstitutionally impaired the lease between Macpherson and the City authorizing the Oil Project; and (2) Macpherson was entitled to specific performance. The trial court, however, found the City did not breach the lease when it terminated the Oil Project. The City filed a cross-appeal.

Macpherson objected to entry of judgment on the cross-complaint because the trial court entered that judgment primarily upon briefing of the parties. Other than a “certified record” filed by the City and additional documents filed by Macpherson relating to safety risks posed by the Oil Project, the trial court held no evidentiary hearings or a trial. Neither party filed a motion for summary judgment or summary adjudication.

The trial court entered judgment on Macpherson's cross-complaint before we filed our decision in [Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach](#) (2001) 86 Cal.App.4th 534, 103 Cal.Rptr.2d 447 (hereafter “*Stop Oil I*”). The judgment on Macpherson's cross-complaint was impliedly reversed by this court's decision in *Stop Oil I* in which we held, upon appeal of the plaintiff Stop Oil's severed complaint, that “reinstatement of a total ban on oil drilling within the City, adopted through the initiative process

... [did not constitute] an unconstitutional impairment of the 1992 lease agreement between Macpherson and the City for oil and gas exploration and production on City-owned property.” (*Id.* at p. 540, 103 Cal.Rptr.2d 447.)

In *Stop Oil I*, we expressly did not reach the issue presented by this appeal, that is whether Macpherson “may have a viable claim for breach of contract against the City.” (*Stop Oil I, supra*, 86 Cal.App.4th at p. 571, 103 Cal.Rptr.2d 447.)

We express no opinion upon the merits of Macpherson's claims against the City. We remand this case to the trial court because of the above-identified procedural irregularities and to allow the trial court to decide this case in light of *Stop Oil I*.

PROCEDURAL AND FACTUAL BACKGROUND

The judgment on Macpherson's cross-complaint arises from the same factual background presented in *Stop Oil I*. The parties have provided us with the same record presented to this court in *Stop Oil I*, supplemented by later proceedings in the trial court. Examining the issues presented by this appeal, we have independently reviewed the record and find it consistent with the factual background presented in *Stop Oil I*. In this regard, we adopt and expressly incorporate relevant portions of the factual and procedural background enunciated in *Stop Oil I*.

1. *Factual Background*

a. *Authorization of Oil Exploration Within the City.*

*2 “In 1932 the voters of the City enacted a ban on all oil and gas operations within the City, declaring such activity to be both unlawful and a public nuisance. (Hermosa Beach Mun.Code, § 21-10.)” ([Stop Oil I, supra](#), 86 Cal.App.4th at p. 540, 103 Cal.Rptr.2d 447, fn. omitted.)

“In 1984, to generate the funds needed to acquire open space and parklands within the City, the voters adopted Propositions P and Q, council-sponsored ballot measures creating exceptions to the ban on oil exploration and production for two publicly owned sites within the City: the City Yard Site, a parcel owned by the City and being used as its maintenance

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yard; and the School Site, a parcel owned by the local school district. (Hermosa Beach Mun.Code, § 21-10, subds. (a) & (b).)” ([Stop Oil I, supra, 86 Cal.App.4th at pp. 540-541, 103 Cal.Rptr.2d 447.](#))

b. The Lease Agreements Between the City and Macpherson

“In June 1986 the City published a request for proposals for oil exploration and production at the two sites. Macpherson Oil Company, which had in 1976 proposed developing oil resources in the tidelands of Hermosa Beach and had been a leading force in placing the 1984 ballot measures before the voters, was the only company to respond to the City's request.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 541, 103 Cal.Rptr.2d 447.](#))

“Negotiations ensued between the City and Macpherson and resulted in an agreement, Oil and Gas Lease No. 1.... In January 1992 the parties entered into a second lease, Oil and Gas Lease No. 2, which superseded the initial lease and its various amendments.... The 1992 lease remains the operative agreement between the [City and Macpherson.](#)” ([Stop Oil I, supra, 86 Cal.App.4th at p. 541, 103 Cal.Rptr.2d 447, fns. omitted.](#))

“Under the lease Macpherson obtained the right to conduct oil and gas operations within the City. The City was obligated to deliver the City Yard Site to Macpherson for use as a drill site and to obtain State Lands Commission (SLC) approval to allow drilling for oil in the tidelands.” ([Stop Oil I, supra, 86 Cal.App.4th at pp. 541-542, 103 Cal.Rptr.2d 447.](#))

c. Adoption of Proposition E.

“Beginning in April 1994 the Hermosa Beach Stop Oil Coalition began a campaign to qualify a ballot initiative to end the Macpherson project and to reinstate the comprehensive prohibition on oil drilling in the City by deleting from the Municipal Code the two exceptions from the ban that had been approved in 1984. (Hermosa Beach Mun.Code, § 21-10, subds. (a) & (b).) The measure, Proposition E, appeared on the November 1995 ballot.^{FNI}” ([Stop Oil I, supra, 86 Cal.App.4th at p. 543-544, 103 Cal.Rptr.2d 447.](#))

^{FNI}. “Proposition E provides:

7F' ‘An Ordinance of the City of Hermosa Beach, California, Deleting from the Municipal Code Paragraphs (a) and (b) of Section 21-10 Relating to the Two Exceptions to the Citywide Oil Well Drilling Prohibition Which Are Located at the City Yard Site (6th Street and Valley Drive) and the Former South School Playground (5th Street and Valley Drive).

“ ‘The People of the City of Hermosa Beach Do Ordain as Follows:

“ ‘*Section 1. Purpose and Findings.* Clean water, pure air, and a safe environment are vital to maintaining the quality of life in the South Bay. The People of the City of Hermosa Beach find the safety and protection of the lives of its citizens and the public generally, and protection of persons and property from the dangers of fire, explosions, pollution, and other hazards, demand and require that the drilling or operating for the discovery of and/or production of oil, gas, hydrocarbon, or other related substances be prohibited, as in this ordinance set forth; now, therefore,

“ ‘*Section 2. Paragraphs (a) and (b) of Municipal Code Section 21-10, Oil Wells Prohibited, Exceptions* are hereby deleted in their entirety.

“ ‘*Section 3.* If any portion of this ordinance is declared invalid, the remaining portion is to be considered valid.

“ ‘*Section 4.* There shall be no modification, amendment or repeal of any provisions of this initiative except by a vote of the people.’ (Official Sample Ballot (Nov. 7, 1995) Proposed Ordinance-Prop. E.)” ([Stop Oil I, supra, 86 Cal.App.4th at p. 544, fn. 5, 103 Cal.Rptr.2d 447](#))

“Proposition E was approved with 56 percent of the vote....

“Notwithstanding Proposition E's adoption by the

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voters, the City continued to perform under its lease with Macpherson based on its concern that it would face legal exposure if it terminated the lease agreement. When notified of the City's decision to continue to respect the lease agreement, Stop Oil commenced this lawsuit [on June 9, 1997] for declaratory and injunctive relief to require the City to apply Proposition E to the Macpherson project.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 545, 103 Cal.Rptr.2d 447.](#))

2. Proceedings

a. The Plaintiffs' Underlying Complaint

*3 “Stop Oil's complaint [sought] a declaration (and parallel injunction) that Proposition E [applied] to the Macpherson project and that as a result the City [could] not issue building, well or drilling permits.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 545, 103 Cal.Rptr.2d 447.](#))

b. The City's 1998 Decision to Terminate the Project

“In January 1998, during the pendency of proceedings in the trial court and in connection with the hazard analysis required by the Coastal Commission, the City authorized an independent review and risk assessment of the project. The Aspen/Bercha Group was hired and ultimately produced a report that was presented to the City at a public hearing on September 17, 1998.

“At the conclusion of the hearing, based primarily on the information contained in the Aspen/Bercha report, the city council, by a vote of three to zero, determined that the dangers to public health and safety posed by the project were substantial and unacceptable and agreed to terminate the project. The council adopted findings that the most serious risk presented by the project would be the escape of a methane gas cloud that, if ignited, could cause a catastrophe and that, even if operated according to industry standards, the project posed safety risks that could not be mitigated to an acceptable degree.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 547, 103 Cal.Rptr.2d 447, fn. omitted.](#))

c. The Trial Court's Tentative Decision on Stop Oil's Complaint

“On November 4, 1998, the trial court announced its

tentative decision denying Stop Oil's request for declaratory and injunctive relief. The trial court ruled that there was no doubt that Proposition E was intended to apply to the Macpherson project. It held, however, that application of Proposition E to the project would be an unconstitutional impairment of contract.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 546, 103 Cal.Rptr.2d 447.](#))

d. The City's Adoption of Resolution No. 98-5950

On December 8, 1998, the City Council formerly adopted Resolution No. 98-5950, pursuant to which the City terminated the Oil Project.

e. Macpherson's Cross-Complaint

After the City adopted Resolution No. 98-5950, on December 10, 1998, Macpherson filed a cross-complaint against the City. Macpherson alleged the Aspen/Bercha report did not demonstrate any previously unknown health or safety risks, and the City breached the lease by terminating the Oil Project based upon the Aspen/Bercha report.

f. The City's Answer to Macpherson's Cross-Complaint

“[On January 15, 1999,] [t]he City answered, asserting that it was entitled to exercise its discretion to deny further permits and thus to terminate the project based on the public safety concerns identified in the report. The cross-complaint [was] severed from the original action, which proceeded to judgment.” ([Stop Oil I, supra, 86 Cal.App.4th at p. 547, 103 Cal.Rptr.2d 447, fn. omitted.](#))

g. The March 24, 1999 Status Conference

On March 24, 1999, the trial court held a status conference on Macpherson's cross-complaint, at which it was determined the parties would brief the following issues: (1) whether the risk to public health and safety from the Oil Project could be determined from a certified record of the City's proceedings concerning the risk to public safety from the Oil Project; (2) whether the evidence in the City's certified record showed sufficient risk to the public health and safety to justify a decision by the City to terminate the Oil Project and excuse the City from further performance under the lease; and (3) if the evidence in the City's certified

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record was insufficient to establish a danger to public health and safety, what remedies were available to Macpherson under the circumstances.

h. The Trial Court's Final Judgment on the Plaintiffs' Complaint

*4 Over Macpherson's objections, on November 17, 1999, the trial court entered final judgment denying Stop Oil's complaint for injunctive and declaratory relief. The trial court adopted its tentative decision as the final judgment, finding the City and Macpherson had a valid contract, Proposition E was intended to stop the Oil Project, and application of Proposition E to the Oil Project would "constitute a total and unconstitutional impairment" of the lease between Macpherson and the City.

i. The Trial Court's Judgment on Macpherson's Cross-Complaint

Based upon the parties' briefing following the March 24, 1999 status conference, on March 9, 2000, while the appeal was pending in *Stop Oil I*, the trial court entered a tentative decision on Macpherson's cross-complaint, entitled "Tentative Decision Re: Danger to Health and Safety Arising from the Proposed Macpherson Oil Project." The trial court held no evidentiary hearings or a trial to allow the parties to develop a factual record regarding any of the contested lease provisions. Neither party filed a motion for summary judgment.

The trial court found the City did not have any "new" evidence of a "substantial risk to public health and safety" to justify terminating the oil project at the September 17, 1998 City Council meeting. The trial court held, however, the City's rejection of the lease on health and safety grounds, based upon the September 17, 1998 City Council meeting, could not constitute a breach of contract for two reasons: (1) the lease contained a provision authorizing the City to temporarily suspend Macpherson's operations for safety and health reasons, which, according to the trial court, "arguably include[d] the ability to permanently 'suspend' the contract;" and (2) the City, under the "reserved powers doctrine" cannot contract away its police powers to protect the safety of its citizens.

Nevertheless, the trial court found the City violated the provisions of both the United States and California

Constitutions prohibiting state impairment of contract by its "complete impairment of its obligations under the lease" because the City was not justified in rejecting the lease on health and safety grounds. The trial court concluded Macpherson's sole remedy was specific performance.

j. This Court's Decision in Stop Oil I

On January 24, 2001, this court filed its decision in *Stop Oil I*. In that opinion, we held the "reinstatement of a total ban on oil drilling within the City, adopted through the initiative process ..., [did not constitute] an unconstitutional impairment of the 1992 lease agreement between Macpherson and the City for oil and gas exploration and production on [City-owned property.](#)" (*Stop Oil I, supra*, 86 Cal.App.4th at p. 540, 103 Cal.Rptr.2d 447.)

In *Stop Oil I*, we did not reach the issue presented by this appeal-whether Macpherson has a "viable claim for breach of contract against the [City.](#)" (*Stop Oil I, supra*, 86 Cal.App.4th at p. 571, 103 Cal.Rptr.2d 447.)

k. Notices of Appeal

*5 Both Macpherson and the City filed timely notices of appeal.

CONTENTIONS

Macpherson contends the judgment on its cross-complaint must be reversed because: (1) It does not dispose of all of Macpherson's breach of contract claims; (2) It improperly deprived Macpherson of its right to a jury trial; (3) It improperly treats Macpherson's claims as an action for administrative mandamus; (4) The City's action on September 17, 1998 constituted a breach of the lease; (5) Macpherson is entitled to damages for the City's breach of the lease; and (6) The City waived its right to rely upon Proposition E as a defense to Macpherson's breach of contract claims.

The City has filed a timely, but unnecessary, cross-appeal.^{FN2} The City contends as follows: (1) The holding in *Stop Oil I* that the 1995 adoption of Proposition E applied to the lease and precluded the oil drilling project in 1995 makes the City's 1998 decision to stop the oil drilling legally irrelevant, so that the

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1998 decision by the City to stop the drilling cannot be a basis for a breach of contract claim; (2) The lease provision requiring Macpherson to comply with all local ordinances then in effect and thereafter adopted precludes any finding that application of Proposition E impairs the lease; (3) The provisions of the lease and the Conditional Use Permit (CUP) requiring Macpherson to comply with all laws and ordinances in effect at the time of the lease, and thereafter adopted, preclude any finding that the City breached the lease; (4) Damages are not available for constitutional impairment of contract; (5) The City's impossibility of performance by reason of Proposition E as applied in *Stop Oil I* provides the City with a complete defense to Macpherson's breach of contract claim; and (6) The evidence that the oil drilling project was a danger to public health and safety was sufficient to allow the City to stop the project under the terms of the lease and the conditions of the CUP.

FN2. The City's cross-appeal seeks review of the judgment on Macpherson's cross-complaint. The City's contentions are properly urged under Code of Civil Procedure section 906 without the need for a cross-appeal. (*Erikson v. Weiner* (1996) 48 Cal.App.4th 1663, 1671, 56 Cal.Rptr.2d 362.) Accordingly, because we consider the City's contentions on appeal, we grant Macpherson's motion to dismiss the City's cross-appeal.

DISCUSSION

1. *We Remand this Case to the Trial Court.*

[1] In this case, the trial court entered judgment on Macpherson's cross-complaint based almost solely upon the parties' briefing following the March 24, 1999 status conference. There were no motions for summary judgment or summary adjudication. The trial court held no evidentiary hearings or a trial. In addition, the trial court did not have the benefit of *Stop Oil I* when it entered judgment on Macpherson's cross-complaint.

We reverse the trial court's judgment on Macpherson's cross-complaint. Because of the identified procedural irregularities, and because the trial court did not have the benefit of *Stop Oil I* when it entered judgment on Macpherson's cross-complaint, we remand this case to

the trial court for proceedings consistent with *Stop Oil I*.

2. *On remand, Pursuant to Its Inherent Discretion, the Trial Court May Consider any Relevant and Admissible Evidence in Addition to the City's "Certified Record."*

*6[2] Macpherson correctly argues that upon remand, it may present evidence to the trier of fact outside the City's "certified record." "As a general proposition, mandamus is not an appropriate remedy for enforcing a contractual obligation against a public entity for at least two reasons. The first is that contracts are ordinarily enforceable by civil actions, and the writ of mandamus is not available unless the remedy by civil action is inadequate. [Citations.] The other is that the duty which the writ of mandamus enforces is not the contractual duty of the entity, but the official duty of the respondent officer or board." (*ABI, Inc. v. City of Los Angeles* (1984) 153 Cal.App.3d 669, 687-688, 200 Cal.Rptr. 563; *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 67 Cal.Rptr.2d 850; Code Civ. Proc. §§ 1085, 1094.5.))

In this case, Macpherson is not seeking a writ of mandate to compel any City officials to engage in any particular actions, such as granting a permit. Instead, Macpherson is suing the City for breach of contract to enforce a contractual right against the City. In this regard, subject to any defenses the City may have, Macpherson has an adequate remedy at law.

In addition, the City in its briefing to the trial court agreed Macpherson's cross-complaint did not present a mandamus action, stating: "Further, while determining the public safety issue from the [City's certified record] makes this proceeding analogous in some respects to a mandamus action, the City does not claim that this is a mandamus action or that the remedy if the City erred is simply a writ of mandate remanding the matter back to the City for further proceedings in light of the Court's opinion."

Thus, on remand, subject to its inherent discretion, the trial court may admit relevant and otherwise admissible evidence not contained in any administrative records or the "certified" record filed by the City.

DISPOSITION

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We reverse the trial court's judgment on Macpherson's cross-complaint. Because of the identified procedural irregularities, and because the trial court did not have the benefit of *Stop Oil I* when it entered judgment on Macpherson's cross-complaint, we remand this action to the trial court for further proceedings consistent with *Stop Oil I*.

Each party to bear its own costs on appeal.

We concur: [KLEIN](#), P.J., and [CROSKEY](#), J.
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