

**1. HITCHCOCK, ET AL. v. CITY OF SOUTH LAKE TAHOE, 22CV1691****Real Party In Interest Lukins Brothers Water Company's Demurrer to Petition**

On November 4, 2022, Greg and Jessica Hitchcock filed a verified petition for a writ of mandate or, alternatively, a petition for writ of administrative mandate directed to Respondent City of South Lake Tahoe ("City") concerning Real Party In Interest Lukins Brothers Water Company's ("Lukins") use of its property at 843 Hazel Drive as an industrial storage facility. Pending is Lukins's demurrer to the petition. The City filed a joinder, in part, to the demurrer and Lukins's reply.

**A. STANDARD OF REVIEW**

"At the outset it is settled that the sufficiency of a petition in a mandamus proceeding can be tested by demurrer." (Hilton v. Bd. of Supervisors (1970) 7 Cal.App.3d 708, 713, citing Temescal Water Co. v. Dept. Public Works (1955) 44 Cal.2d 90, 106–107.) "[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (Amarel v. Connell (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30(a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of fact or law. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.App.3d at p. 318.)

**B. DISCUSSION**

As an initial matter, petitioners object to the demurrer pursuant to California Rules of Court, rule 3.1320(a), which states that "[e]ach ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses." (Ibid.) Further, the

papers filed in support of a demurrer must include (1) the demurrer itself, (2) a notice of hearing on the demurrer, and (3) a memorandum in support of the demurrer. (Cal. Rules of Ct., rules 3.1112(a), 3.1113(a).) These required papers may be filed as separate documents or may be combined in one document if specified separately in the caption of the combined pleading. (Id., rule 3.1112(c).)

Lukins did not comply with any of the above-cited Rules of Court. As such, petitioners' objection is well taken. Lukins's demurrer to the petition is overruled without prejudice. Lukins is authorized to properly draft and renew the demurrer.

**TENTATIVE RULING # 1: LUKINS BROTHERS WATER COMPANY'S DEMURRER TO THE PETITION IS OVERRULED WITHOUT PREJUDICE. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS v. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.**