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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

EASTGATE PETROLEUM, LLC,

Plaintiff and Appellant,

v.

COUNTY OF SAN LUIS OBISPO et al.,

Defendants and Respondents.

2d Civ. No. B278944
(Super. Ct. No. CV120651)
(San Luis Obispo County)

Eastgate Petroleum, LLC (Eastgate) appeals a judgment dismissing its writ of mandate/inverse condemnation action against defendants County of San Luis Obispo, San Luis Obispo Environmental Health Services, Linnea Faulkner and Aaron Labarre (County defendants) following the sustaining of a demurrer without leave to amend. The trial court ruled Eastgate's challenge to an administrative decision imposing civil penalties for Eastgate's violation of hazardous materials

regulations (Health & Saf. Code, § 25404.1.3) was barred by the running of the statute of limitations.[1]

In a prior appeal by Eastgate in *Certified Unified Program Agency for San Luis Obispo County v. Eastgate Petroleum, LLC* (Aug. 14, 2017, B271741) [nonpub. opn.]) (*Eastgate I*), we ruled Eastgate's challenge to *that same administrative decision* was barred by the running of the statute of limitations. That prior judgment in *Eastgate I* is now final. We conclude, among other things, that Eastgate's current challenges to that administrative decision are barred by the res judicata/collateral estoppel doctrine. We affirm.

FACTS

On August 23, 2012, the Certified Unified Program Agency for San Luis Obispo County (CUPA), an environment protection enforcement agency, issued "unilateral enforcement orders" against Eastgate and another petroleum company, Bay Area Diablo Petroleum (Bay Area Diablo). It found they violated Health and Safety Code and state regulations relating to controlling hazardous materials in their underground storage tanks. (§ 25404.1.1.)

The companies appealed. An administrative law judge (ALJ) found the violations occurred and assessed a total of $1,412,355 as "administrative penalties." The ALJ ruled the companies could "seek reduction of the total penalty" for "financial hardship" by presenting evidence to CUPA. In a "supplemental unilateral enforcement order," CUPA determined Eastgate's penalty was $933,330.

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[1] All statutory references are to the Health and Safety Code unless otherwise stated.

Eastgate and Bay Area Diablo appealed. After an administrative hearing, the ALJ determined the companies had the ability to pay the penalties and he set a payment schedule. The County of San Luis Obispo (County) adopted the ALJ decision, which was served by mail on Eastgate and Bay Area Diablo on April 23, 2015.

On May 26, 2015, Bay Area Diablo filed a petition for writ of mandate to challenge that final administrative decision (hereafter "the Bay Area Diablo case" or "the current case"). That petition was filed within the 30-day statute of limitations. (Gov. Code, § 11523; § 25404.1.3.)

Eastgate did not file a petition for writ of mandate to challenge that administrative decision.

The Judgment in the Prior Case (Eastgate I)

On October 30, 2015, several months after the expiration of the statute of limitations to challenge the administrative decision, CUPA filed an "application for judgment" to collect the "administrative penalty" of $939,330 against Eastgate based on the final administrative decision. (§ 25404.1.3.)

Eastgate moved to vacate that judgment under Code of Civil Procedure section 473, subdivision (b), claiming its counsel erred by not including Eastgate in the case filed by Bay Area Diablo. This motion was filed approximately five months after the expiration of the statute of limitations to challenge the administrative decision.

The trial court (Judge Crandall) denied the motion ruling that Eastgate's challenge to the administrative decision was barred by the running of the statute of limitations. He said, "Neither mandatory nor discretionary relief under CCP § 473(b) is available where there is a failure to file within the time allowed by the statute of limitations."

In a motion for reconsideration, Eastgate noted that Judge LaBarbera in the Bay Area Diablo case had recently granted a motion to amend the pleadings to add Eastgate as a plaintiff.

Judge Crandall denied the motion. He said Judge LaBarbera had ruled the "viability" of the amended pleading had to be decided in a future demurrer in the Bay Area Diablo case. Crandall said LaBarbera granted the motion to amend that pleading to add Eastgate out of "an abundance of caution without actually considering the merits of the amendment." He noted that "Judge LaBarbera's ruling specifically states that questions concerning the viability of any amended complaint would be better addressed in the context of a demurrer . . . ." Crandall believed Eastgate's amended pleading in the Bay Area Diablo case could not survive a demurrer because of the statute of limitations issue.

Eastgate appealed. We affirmed and ruled Eastgate's challenges to the administrative decision were barred by the running of the statute of limitations because it did not timely file a petition for writ of mandate. We decided the judgment CUPA obtained against Eastgate was enforceable.

The Bay Area Diablo Case (the Current Case)

On May 26, 2015, Bay Area Diablo filed a petition for writ of mandate to challenge the final administrative decision that imposed the civil penalties.

On March 1, 2016, Bay Area Diablo filed a first amended petition for writ of administrative mandamus and third amended complaint for inverse condemnation and violation of civil rights. (42 U.S.C. § 1983.) For the first time, Eastgate was added as a party plaintiff. Eastgate alleged the administrative decision imposing civil penalties that was adopted by the County defendants was "unreasonable, arbitrary and capricious"; it

violated its right to "due process" and subjected it to "extreme financial hardship." It sought to set aside the administrative decision and monetary damages.

Judge LaBarbera granted permission to file this amended pleading, but noted the ultimate validity of the amended pleading that added Eastgate "should be more fully addressed at [the] demurrer stage of the proceedings."

The County defendants filed a demurrer claiming Eastgate could not be added because "Eastgate's action is barred" by "the statute of limitations."

Judge LaBarbera sustained a demurrer to this amended pleading without leave to amend. He said, "Eastgate's causes of action arise out of the County's assessment of penalties against it"; "Eastgate's joinder in this judicial action appears time-barred because the time to challenge the administrative decision prescribed by Government Code § 11523 has run and the administrative decision is final." He rejected the claim that the amended pleading adding Eastgate related back to the timely filing of the initial petition for writ of mandate filed by Bay Area Diablo.

DISCUSSION

Res Judicata/Collateral Estoppel

In *Eastgate I*, *supra*, B271741, we ruled Eastgate's challenge to the same administrative decision it seeks to challenge in this case was barred by the running of the statute of limitations. Our decision and the judgment it affirmed are now final as the remittitur has issued.

Where the same party appeals two judgments raising the same issue, the first final judgment against that party may bar its pending appeal under the res judicata/collateral estoppel

doctrine. (*First N.B.S. Corp. v. Gabrielsen* (1986) 179 Cal.App.3d 1189, 1195-1196.)

"'Collateral estoppel is one of two aspects of the doctrine of res judicata.'" (*Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407, 1413.) "'In its narrowest form, res judicata "'precludes parties or their privies from relitigating a *cause of action* [finally resolved in a prior proceeding].'"'" (*Id.* at pps. 1413-1414.) "'But res judicata also includes a broader principle, commonly termed collateral estoppel, under which an *issue* "'necessarily decided in [prior] litigation [may be] conclusively determined as [*against*] *the parties [thereto] or their privies* . . . in a subsequent lawsuit on a *different* cause of action.'"'" (*Id.* at p. 1414.)

"'Collateral estoppel applies when (1) the party against whom the plea is raised was a party or was in privity with a party to the prior adjudication, (2) there was a final judgment on the merits in the prior action and (3) the issue necessarily decided in the prior adjudication is identical to the one that is sought to be relitigated.'" (*Smith v. ExxonMobil Oil Corp.*, *supra*, 153 Cal.App.4th at p. 1414.)

Eastgate contends collateral estoppel does not apply because "there was never a decision on the merits" in our prior decision--*Eastgate I*. We disagree.

The critical issue in *Eastgate I*, as in the current case, is whether the statute of limitations barred Eastgate's challenge to the administrative decision. We ruled against Eastgate on that issue. In *Eastgate I*, Eastgate also challenged the validity of the administrative decision. It claimed the ALJ did not use proper language to apply the orders to Eastgate and consequently the final administrative decision, its orders and the judgment enforcing the administrative decision could not be enforced. We

concluded the administrative decision and the judgment enforcing it were valid and enforceable. That judgment is now final.

Eastgate contends the judgment in *Eastgate I* was only "a default judgment." But we rejected this claim. We said, "[T]he trial court correctly ruled this case did not involve a default judgment." (*Eastgate I*, *supra*, B271741.) It "involved a completed administrative proceeding. Eastgate participated, but did not file a petition to challenge the administrative decision within the 30-day limitations period." (*Ibid.*) That administrative proceeding is both the subject of the amended pleading in the current case and the judgment in the prior case (*Eastgate I*). Our decision in *Eastgate I* terminated Eastgate's right to challenge the final administrative decision from that proceeding. Eastgate may not relitigate that issue. (*Smith v. ExxonMobil Oil Corp.*, *supra*, 153 Cal.App.4th at p. 1414; *McClain v. Rush* (1989) 216 Cal.App.3d 18, 28-29 [collateral estoppel precludes party from relitigating prior statute of limitations ruling].)

It is true, as Eastgate suggests, there are cases in which application of collateral estoppel is unfair. "Even where minimum requirements for collateral estoppel are established, the doctrine will not be applied 'if injustice would result . . . .'" (*Roos v. Red* (2005) 130 Cal.App.4th 870, 886.) In determining fairness, we consider if there was "a forum where the parties were afforded a fair and full opportunity to present their evidence and arguments and appellate review of adverse rulings was available." (*Id.* at p. 888.)

In *Eastgate I*, Eastgate had two hearings in which it argued to vacate the judgment following the administrative decision. Those hearings provided Eastgate an adequate forum to present

its claims and show why the judgment and the administrative decision should not be enforced. It had the opportunity to preserve a record and select the issues it wished to raise. On appeal, we considered all the issues Eastgate raised, including its claim that it had a right to vacate the judgment and its challenge to the administrative decision. Eastgate had a full and fair opportunity to present its claims in the prior action. (*Roos v. Red*, *supra*, 130 Cal.App.4th at p. 888.)

The Relation-Back Doctrine

Eastgate relies on the relation-back doctrine to override its failure to meet the statute of limitations. It claims this doctrine allows us to consider the amended pleading filed on the date when Bay Area Diablo first filed its petition for writ of mandate.

But in Eastgate's opening brief on appeal in *Eastgate I*, it also claimed, "*the relation-back doctrine would certainly apply*" to add it as a plaintiff in the Bar Area Diablo case. (Italics added.) We noted that Judge Crandall decided that the amended pleading in the Bay Area Diablo case could not survive a demurrer because of the statute of limitations. We affirmed. That affirmance was a rejection of Eastgate's claims on appeal. (*Steelduct Co. v. Henger-Seltzer Co.* (1945) 26 Cal.2d 634, 642.) The res judicata/collateral estoppel doctrine prohibits Eastgate from relitigating issues it raised, or could have raised, in the prior final case. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798-799; *Smith v. ExxonMobil Oil Corp.*, *supra*, 153 Cal.App.4th at p. 1414; see also *Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th 866, 888; *Hooks v. State Personnel Board* (1980) 111 Cal.App.3d 572, 578.)

"Once the statute of limitation has passed as to other possible plaintiffs, a defendant is entitled to dismiss them from his considerations." (*Bartalo v. Superior Court* (1975) 51

Cal.App.3d 526, 534.) "An amended pleading will . . . relate back if it makes a mere technical change in the capacity in which the plaintiff sues on the same cause of action." (*San Diego Gas & Electric Co. v. Superior Court* (2007) 146 Cal.App.4th 1545, 1550.) "A complaint may be amended after the statute has run to correct the misdescription of a party, *but not to add a new party*." (*Alliance for Protection of Auburn Community Environment v. County of Placer* (2013) 215 Cal.App.4th 25, 32, italics added; *Kupka v. Board of Administration* (1981) 122 Cal.App.3d 791, 795 [relation-back doctrine does not apply to add a new party].)

Moreover, "the doctrine of relation-back does not apply where the cause of action in the complaint is in favor of one plaintiff whereas the cause of action in the amended complaint is in favor of another plaintiff." (*Phoenix of Hartford Ins. Companies v. Colony Kitchens* (1976) 57 Cal.App.3d 140, 146.) "[A]n amended pleading that adds a new plaintiff will not relate back to the filing of the original complaint if the new party seeks to enforce an independent right or to impose greater liability against the defendants." (*San Diego Gas & Electric Co.*, *supra*, 146 Cal.App.4th at p. 1550.)

Here the amended pleading added a new plaintiff to the lawsuit--Eastgate. The County notes that Bay Area Diablo and Eastgate were "separate legal entities" that "had different obligations and opportunities to respond to the County regulators . . . ." Each had its own legal interest to protect itself from liability. In the amended pleading, Bay Area Diablo is described as a California Corporation that owned four "vehicle fuel dispensing stations." Eastgate is described as a "Nevada limited liability company" that had "a lease agreement" with Bay Area Diablo to "lease[] all equipment" at three of Bay Area Diablo's four facilities.

Eastgate suggests that it should be considered a related entity to Bay Area Diablo. It notes that both were parties to the administrative proceedings. The County responds that the liability of Bay Area Diablo and Eastgate is "not co-extensive." The amended pleading contains allegations about a 26th Street facility. That exclusively involves Bay Area Diablo. That pleading lists Bay Area Diablo and Eastgate as separate party plaintiffs. In the administrative decision, the ALJ found Bay Area Diablo and Eastgate were "separate entities."

Moreover, Eastgate and Bay Area Diablo had different rights and diverse procedural paths to challenge the administrative decision. Bay Area Diablo could directly challenge it. By contrast, Eastgate could not make such a direct challenge because it was subject to the prior *judgment* enforcing the administrative decision. (§ 25404.1.3, subd. (b).) That judgment "has the same force and effect as . . . a judgment in a civil action" against Eastgate. (*Ibid.*) Eastgate first had to overturn that judgment to be able to contest the merits of the administrative decision. Such litigation would significantly change and expand the scope of this lawsuit. That, by itself, supports the ruling that the relation-back doctrine could not apply.

In addition, Bay Area Diablo pled a cause of action for mandamus relief; Eastgate did not. Eastgate failed to plead facts in the petition to show grounds to overturn the judgment enforcing the administrative decision. It only sought to challenge the administrative decision's "findings of fact and conclusions of [law]." But it could not obtain relief by only challenging the administrative decision, and not the judgment enforcing it and imposing liability by the court against Eastgate. (§ 25404.1.3.)

But even had it pled sufficient facts relating to that judgment, the result would not change. Eastgate sought to enforce its independent right to reduce its liability for its civil penalties. Its claim of excessive penalties involved a separate issue based on its financial condition, independent from Bay Area Diablo's. It also sought monetary damages, punitive damages and attorney fees against the defendants, which could substantially increase their potential liability. Instead of defending against one plaintiff seeking damages, the amended pleading would subject the defendants to defend against two plaintiffs seeking damages. The nature of those damages would be different and the litigation about damages would substantially expand the scope of the lawsuit.

Because Eastgate "must show the nature of" its 1) individual grounds to reduce its penalties and 2) its separate claims for damages, the amended pleading "necessarily inserts a new cause of action that seeks to enforce an independent right; as such, the relation-back doctrine will not apply." (*San Diego Gas & Electric Co. v. Superior Court*, *supra*, 146 Cal.App.4th at pp. 1552-1553.) In addition, the amendment was filed late. In Case No. B271741, we ruled there was no showing of good cause for Eastgate's delay.

Constitutional Causes of Action

Eastgate contends its causes of action concerning inverse condemnation and constitutional civil rights (42 U.S.C. § 1983) in its amended pleading are not barred by the statute of limitations or the res judicata/collateral estoppel doctrine. These causes of action challenged the environmental enforcement actions that were the subject of the administrative decision.

But these were issues that Eastgate could have been raised in the prior appeal (*Eastgate I*). The amended pleading

containing these causes of action was part of the record in that case. In our decision we noted Judge LaBarbera had "sustained the county's demurrer to that amended pleading without leave to amend." This ruling was part of the record in that prior appeal, and it is the *same ruling* that is the subject of the current appeal. In *Eastgate I*, we held Eastgate's mandamus petition was barred. The causes of action for damages in that pleading were issues that could have been raised on appeal there.

Moreover, because *Eastgate I* involved enforcement of the administrative decision, all issues challenging its enforceability should have been raised there. But Eastgate challenged the administrative decision's enforceability on only one ground in that appeal. It did not challenge its enforceability on the grounds that it approved environmental enforcement actions that violated its civil rights or constituted an inverse condemnation. "A party cannot by negligence or design withhold issues and litigate them in consecutive actions." (*Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1481; see also *Basurto v. Imperial Irrigation Dist.*, *supra*, 211 Cal.App.4th at p. 888; *Hooks v. State Personnel Board*, *supra*, 111 Cal.App.3d at p. 578.) ""[A] judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different *legal ground* for relief."" (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 798.)

But the final preclusive effect of the prior appeal is not the only reason why these causes of action do not survive. These damage and constitutional causes of action were raised to challenge: 1) the County's environmental enforcement actions, 2) the orders in the administrative decision, 3) the County's approval of that decision, and 4) the impact of the civil penalties the ALJ imposed. As Judge LaBarbera correctly observed,

"Eastgate's *causes of action arise* out of the County's assessment of penalties against it." (Italics added.) They were claims connected to Eastgate's challenge to the administrative decision.

Eastgate concedes that part of its claim for damages for inverse condemnation and violation of its civil rights (42 U.S.C. § 1983) arose "out of the County's assessment of penalties against it." It contends, however, that the County's environmental enforcement actions to obtain those penalties were unreasonable and maliciously motivated. It argues these claims for damages may still be pursued.

The amended pleading on Eastgate's mandamus, inverse condemnation and civil rights damage causes of action involve the same underlying claim. Eastgate alleged the County defendants' environmental enforcement actions "have been motivated by greed to fill the County's coffers. This case is not about maintaining the health and safety of the County's residents. Rather, it is about taking money and property from small businesses in order to satiate the County's endless need for more funds after years of recession and declining tax revenues."

Eastgate alleged the County defendants "violated [its] right to substantive and procedural due process . . . by wrongfully regulating, interfering with and depriving [Eastgate] . . . of [its] property interests for purposes of oppression and were wholly unrelated to advancing any legitimate state interests." The environmental enforcement actions involved "an impermissible taking" of property that "served no legitimate purpose."

But the ALJ decision, which found Eastgate violated environmental regulations and was subject to civil penalties, is a rejection of such claims. The ALJ found the County's environmental enforcement actions complied with authorized procedures and were lawful.

Eastgate, however, did not file an administrative mandamus action within the period authorized for review of the administrative decision. The administrative decision that determined the County's actions was authorized and reasonable is now final and binding on Eastgate. (*Mola Development Corp. v. City of Seal Beach* (1997) 57 Cal.App.4th 405, 410.) Where a party may challenge an administrative decision through mandamus, it must first successfully pursue that remedy before pursuing related tort and damage claims. (*Westlake Community Hospital v. Superior Court* (1976) 17 Cal.3d 465, 484.) "[S]o long as" the administrative decision "is not set aside through appropriate review procedures the decision has the *effect of establishing the propriety* of the [defendants'] action." (*Ibid.*, italics added); see also *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 71 [the failure "to seek *timely judicial relief*" from the administrative decision means it "'has achieved finality'" and it "'has the effect of *establishing the propriety*'" of the public entity's actions (italics added)].)

Such a final administrative decision will bar a plaintiff's claims for damages on the ground that defendants "intentionally and maliciously misused a quasi-judicial procedure in order to injure" plaintiff or that their actions constituted a "malicious prosecution." (*Westlake Community Hospital v. Superior Court*, *supra*, 17 Cal.3d at p. 484.) It will bar tort and contract causes of action related to the subject matter and findings of the final administrative proceeding. (*Takahashi v. Board of Education*, *supra*, 202 Cal.App.3d 1464, 1482 [final administrative decision upholding teacher's termination barred teacher's subsequent lawsuit for breach of contract, conspiracy to defraud and infliction of emotional distress relating to that termination].) "Failure to obtain judicial review of a discretionary administrative action by

a petition for writ of administrative mandate renders the administrative action *immune* from collateral attack, *either by inverse condemnation action or by any other action*." (*Patrick Media Group, Inc. v. California Coastal Com.* (1992) 9 Cal.App.4th 592, 608, italics added.)

Eastgate may not now pursue damage causes of action against the County for environmental enforcement actions that the ALJ found to be lawful in the final administrative decision. (*City of Santee v. Superior Court* (1991) 228 Cal.App.3d 713, 719 ["By *failing to timely petition* for administrative mandamus to invalidate the conditions imposed . . . , [appellant] is now estopped from litigating *under any theory* the validity of these conditions" (italics added)].)

Eastgate contends its civil rights (42 U.S.C. § 1983) cause of action against the County for its allegedly unreasonable environmental enforcement actions and procedures is not barred. We disagree.

"'[W]here an administrative tribunal has rendered a quasi-judicial decision which could be challenged by administrative mandamus . . . , a party's failure to pursue that remedy may collaterally estop a federal civil rights action.'" (*Mola Development Corp. v. City of Seal Beach*, *supra*, 57 Cal.App.4th at p. 410.) "'Congress in enacting the federal civil rights statute did not intend to create an exception to general rules of preclusion with respect to administrative adjudications.'" (*Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 637, 646.) The mandamus proceeding is the "exclusive remedy for judicial review" of the administrative decision, and when that decision is final, these related civil rights damage claims are barred by the doctrine of collateral estoppel. (*Id.* at pp. 645-646; see also *Miller v. County of Santa Cruz* (9th Cir. 1994) 39 F.3d 1030, 1032

["unreviewed findings of a state administrative tribunal are entitled to preclusive effect in a subsequent § 1983 action in federal court"].)

Unlike the circumstances in *Johnson v. City of Loma Linda*, *supra*, 24 Cal.4th 61, the defense of laches is inapplicable here. The ALJ decided the actions of the County in imposing the environmental fines were lawful. The principle of issue preclusion defeats Eastgate's argument. In *Johnson*, the defense of laches applied where there was no decision on the merits of plaintiff's civil rights action. Here there was such a decision after consideration of the facts presented by Eastgate.

We have reviewed Eastgate's remaining contentions and we conclude it has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded in favor of the respondents on appeal.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Barry T. LaBarbera, Judge

Superior Court County of San Luis Obispo

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