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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| JOHN A. RUSKEY,<br><br>Petitioner and Appellant,<br><br>v.<br><br>GOLETA WATER DISTRICT,<br><br>Defendant and Respondent. | 2d Civil No. B275856<br>(Super. Ct. No. 15CV02359)<br>(Santa Barbara County) |

A farm owner asserts that a local water agency violated Proposition 218, which mandates advance notice of any plan to increase fees or charges. The increase cannot take effect if a majority of affected owners protest it. (Cal. Const., art. XIII D, § 6, subd. (a)(2).) We conclude that the petitioner lacks standing to pursue his claims.

Appellant John A. Ruskey is a long time customer of respondent Goleta Water District (GWD), which provides water to his family farm (farm). During a drought emergency, GWD passed Ordinance No. 2015-04 (the Ordinance), imposing a drought surcharge and revising rates for water users. Ruskey

petitioned to invalidate the Ordinance, claiming that GWD failed to give notice to record owners of property in Goleta.

The trial court sustained GWD's demurrers without leave to amend and dismissed the petition. We affirm the judgment. Ruskey had actual notice of, and participated in, GWD's public rate hearing. He was not harmed by GWD's alleged failure to give notice to a small cohort of non-customer property owners. Even if the recipients had included those owners, the Ordinance would still have been validly passed.

## FACTS AND PROCEDURAL HISTORY[1]

Ruskey filed a petition for writ of mandate and complaint for declaratory relief to invalidate the Ordinance. He alleged that GWD serves some 87,000 customers at more than 16,600 accounts of various types—residential, commercial, institutional and agricultural. In 2015, GWD passed the Ordinance, which made changes to water rates and imposed a drought surcharge, based on a rate study undertaken by GWD.

GWD sent written notice of the proposed rate changes to customers who receive water service. It did not send notice to record owners of each parcel. The farm is part of the Ruskey Family Trust (Trust), which did not receive written notice at its mailing address in Los Angeles. In his capacity as trustee of the Trust, Ruskey asserted that GWD's notice was deficient. He asked that the Ordinance be vacated and notice provided to

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[1] We grant the parties' request to take judicial notice of exhibits that the trial court judicially noticed. (Evid. Code, § 459, subd. (a).) We deny GWD's request to take judicial notice of material that was not presented below.

record owners. The petition did not identify a "customer" who pays for water service at the farm.

The trial court sustained GWD's demurrer. It found that Ruskey did not sufficiently allege that he is an "interested person" with standing to sue, either as trustee or on behalf of the public. The court took judicial notice of documents showing that Ruskey had actual notice and submitted comments to GWD. Ruskey alleged that neither he nor the Trust is a customer of GWD, from which the court concluded that they will not be affected by the rate change. Ruskey was given leave to amend.

Ruskey's first amended petition elaborated on the issue of standing. He reiterated that he did not receive notice of the rate change, as trustee. However, he also alleged that he operates a commercial farm at the location and "in the past and currently pays all of the water fees and charges" to GWD to irrigate coffee, avocados and exotic fruits.

The trial court sustained GWD's demurrer to the amended petition, due to an "unexplained inconsistency." Ruskey initially alleged that he received no notice of a rate change because he is *not* a GWD customer. He now alleges that he operates a farm on the property and uses and pays for water. The court found that the new pleading inexplicably adds facts inconsistent with the original pleading. It wrote, "Ruskey suggests, without expressly stating, that he is not a customer according to [GWD]'s records, but is nonetheless in practical fact a consumer of [GWD]'s water." The court disregarded the inconsistent, unexplained allegations, citing "the policy against sham pleading." Ruskey received leave to amend.

Ruskey and his co-trustee wife filed a second amended petition (SAP), without obtaining leave to add Mrs. Ruskey as a

party. The SAP alleges that the Ruskeys operate the farm on Trust land, irrigated with GWD water. Ruskey became a GWD customer in 1992; since 1999, when title to the farm transferred to the Trust, Ruskey has used Trust funds to pay GWD's bills. He did not ask GWD to change its billing records to list him and his wife as customers. Ruskey remains the "customer" in GWD's records, but the burden of GWD's rate change is on the co-trustees.

The SAP shows that GWD sent notice of the proposed rate change to Ruskey at the farm. Ruskey lives primarily in Los Angeles; his son manages the farm and is responsible for processing mail, including GWD's bills. Ruskey learned of GWD's proposed rate change. He submitted a 33-page protest letter to GWD on June 11, 2015, and spoke at GWD's rate hearing on June 16.

The trial court sustained GWD's demurrer to the SAP without leave to amend. The court rejected Ruskey's attempt to add his wife as a party, finding that leave to amend a cause of action following the sustaining of a demurrer is not a foundation for adding new parties. The court ruled that Ruskey lacks standing to maintain his claims. First, he received notice of GWD's proposed rate change and his co-trustee had imputed notice. Ruskey then participated in GWD's public hearing. He was not personally harmed by any allegedly deficient notice. Second, the court exercised discretion and denied Ruskey public interest standing. It dismissed Ruskey's action with prejudice.[2]

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[2] The judgment lists only Mr. Ruskey, and the court's refusal to allow the sub-rosa addition of Mrs. Ruskey was not appealed. There is only one appellant because Mrs. Ruskey was

## DISCUSSION

GWD supplies water to existing users like Ruskey. In the trial court, the parties proceeded from the premise that GWD's fee increase is subject to article XIII D of the state Constitution. (See *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216-217; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 426-427. But compare *City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191, 1207-1209 [groundwater pumping charge imposed on well operators is not subject to article XIII D].) GWD argued that it complied with the notice requirements in article XIII D. Given the narrowness of the issue presented, we shall limit our analysis to GWD's compliance with article XIII D, without addressing GWD's recent epiphany that a different law (Proposition 26) might apply.

GWD alerted customers of a proposed drought surcharge and increased fees by sending written notice to the addresses where it customarily mails billing statements. (Gov. Code, § 53755, subd. (a)(1).) Ruskey contends that GWD's written notice to bill-paying customers under Government Code section 53755 was inadequate, because the Constitution requires notice "to the record owner." (Cal. Const., art. XIII D, § 6, subd. (a)(1).) We do not reach the issue of whether Government Code section 53755 is irreconcilable with the Constitution or whether GWD had to give notice to its customers *and* to record owners.

The dispositive issue here is that Ruskey had actual notice. We need not ponder if he was wearing his "individual/customer" hat or his "trustee/owner" hat when he received notice. He is a

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never a party. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736 ["only parties of record may appeal"].)

customer and, as trustee, an owner and fiduciary affected by the rate change. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473 [trustee holds legal title to trust property].) As the trial court aptly wrote, Ruskey "has a duty to administer the trust solely in the interest of the trust's beneficiaries [so that] information acquired by a trustee in any capacity must of necessity be deemed to be given to the trustee in his representative capacity insofar as the same person was given the information."

*1. Ruskey Received Actual Notice and Suffered No Harm*

The SAP alleges that GWD mailed notices of its proposed rate change to "customers of record," i.e., those who opened an account and receive monthly water bills. Ruskey opened a GWD account for the farm in 1992; he has been GWD's customer for over 23 years. For "administration record keeping" reasons, Ruskey never asked GWD to change its customer records and send bills to him and his wife, as co-trustees. An exhibit to the SAP shows that GWD sent its notice of public hearing to Ruskey's customer address at the farm, listing proposed rate changes and drought surcharges. The notice described the manner in which to protest.

The SAP states that Ruskey's son processes mail at the farm, including GWD's invoices, as part of his management duties. He did not immediately advise his father of GWD's notice. Nevertheless, Ruskey saw the notice, and objected in writing and orally at the public hearing on June 16, 2015. Ruskey acknowledged receiving the notice, as a customer, in his lengthy protest letter to GWD.

Standing is essential to a lawsuit. "One who invokes the judicial process does not have 'standing' if he, or those whom he

properly represents, does not have a real interest in the ultimate adjudication because the actor has neither suffered nor is about to suffer any injury." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22-23.)

The parties must have an actual controversy, not seek "'an opinion advising what the law would be upon a hypothetical state of facts.'" (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171, quoting *Aetna Life Ins. Co. v. Haworth* (1937) 300 U.S. 227, 240-241.) Courts do not entertain lawsuits with the sole object of settling the rights of third persons who are not parties. (*Golden Gate Bridge etc. Dist. v. Felt* (1931) 214 Cal. 308, 316; *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 937.) "[T]he proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion." (*Pacific Legal Foundation*, at p. 170.)

The pleading shows that Ruskey had actual notice of the proposed rate change and the public hearing. He is GWD's "customer" and notice was sent to him at his address in Goleta. If Ruskey's manager failed to alert Ruskey promptly, the lapse was not attributable to GWD. Most important, Ruskey learned of the proposed Ordinance and protested. He suffered no injury. He is not among the hypothetical class of persons who were ignorant of the rate change and deprived of a chance to protest.

*2. Ruskey Lacks Public Interest Standing*

On occasion, a citizen who is not adversely affected by government action may petition in mandamus to enforce legislation establishing a public right or duty. This "public interest standing" may be outweighed by competing considerations. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 170, fn. 5.)

"'When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. [Citations.] When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need.' [Citations.]" (*Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 875.) "[T]he public interest standing doctrine is designed to ensure that government misconduct *can* be challenged, not that *alleged* government misconduct *will* be challenged in every case." (*Ibid.*) The trial court's ruling on public interest standing is reviewed for an abuse of discretion. (*Ibid.*)

For example, the trial court may exercise its discretion and allow an individual to assert public interest standing to demand a city's compliance with its statutory duty to conduct an initial review of challenged parking citations before they are processed by an outside vendor. (*Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194.) Though the plaintiff in *Weiss* lacked a beneficial interest (because he paid his fine), he alleged that the city issues 8,000 parking citations per day, or 5.7 million citations generating $335 million in revenue over two years, materially affecting a vast swath of the public. (*Id.* at pp. 204-206.) The facts of this case are dissimilar to *Weiss*, where government inaction affected millions of people.

The SAC alleges that GWD "only notified its customers who are not necessarily record owners of the affected properties," and surmises that "record owners were deprived of any notice" of their right to attend the public hearing or submit written protests. The SAC states that GWD serves more than 16,600

properties and a majority of them must submit protests to avoid imposition of the rate hike.

The SAC does *not* allege that a majority of the 16,600 properties (at least 8,300) are property owners who are not "customers." It does state, on information and belief, that the number of owners who lease their properties to tenants "is at least in the hundreds." In those cases, notice was sent to tenants (*if* the tenants were "customers" responsible for water bills) so that the property owner may not have had notice. Proposition 218 extends "'property ownership'" status to tenants. (Cal. Const., art. XIII D, § 2, subd. (g).)

Ruskey has not alleged a weighty public interest, one sufficient to justify application of the "public interest standing" exception to the usual requirement of a beneficial interest. He did not identify a single property owner who was unaware of the proposed rate hike and would have made a written protest, let alone 8,300 property owners who were deprived of notice. Accepting the facts as alleged in the SAC, this is the minimum number of property owners who would have had to submit a written protest to avert passage of the Ordinance. At best, "hundreds" of owners lease out their properties. Even if we assume that all of these owners do not pay for water service and failed to receive notice, the outcome—the Ordinance—was not affected. If given the notice that Ruskey claims they were denied, these owners, acting in unison with written protests, would still fall 8,000 protests short of a majority.

The court did not err in finding that Ruskey lacks standing to litigate this matter on behalf of a small subset of property owners who are not customers of GWD. Further litigation would resolve "abstract differences of legal opinion" (*Pacific Legal*

*Foundation v. California Coastal Com*., *supra*, 33 Cal.3d at p. 170) without affecting the validity of the Ordinance or making a measurable difference to the citizens of Goleta. The value of resolving an abstract legal issue is outweighed by the competing value of the public's interest in enforcing the Ordinance, which was the result of study and public hearings.

*3. Declaratory Relief*

Ruskey's request for declaratory relief duplicates his mandamus claim. (*Mental Health Assn. in California v. Schwarzenegger* (2010) 190 Cal.App.4th 952, 959.) Neither is viable. A request for declaratory relief requires an "actual controversy." (Code Civ. Proc., § 1060.) The issue will be ripe if, in the future, GWD proposes a change in rates or fees. (*Chung v. City of Monterey Park* (2012) 210 Cal.App.4th 394, 407-408; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606.)

**DISPOSITION**

The judgment is affirmed. Respondent is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

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