Filed 12/16/25 Nemer v. City of Mill Valley CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

GARY NEMER, INDIVIDUALLY and as TRUSTEE, etc., Plaintiff and Appellant, v. CITY OF MILL VALLEY et al., Defendants and Respondents.	A170724 (Marin County Super. Ct. No. CIV1701132)

In this long-running dispute that has been before us three times, Mill Valley resident Gary Nemer seeks to void the certificate of occupancy the City of Mill Valley issued to his neighbors after they completed their home remodel project, contending their project violates local law. (See *Nemer v. City of Mill Valley* (Oct. 16, 2020, No. A157210 [nonpub. opn.]) (*Nemer I*); *Nemer v. City of Mill Valley* (Oct. 28, 2020, No. A159224 [nonpub. opn.]) (*Nemer II*); *Nemer v. City of Mill Valley* (Dec. 22, 2023, No. A166234 [nonpub. opn.]) (*Nemer III*).) On remand after a bench trial, the trial court found the completed construction violates local law in one respect—it lacked three on-site parking spaces—and accordingly issued a writ that was limited in scope to that parking issue. The City of Mill Valley (City) then issued an encroachment permit to allow the homeowners to use city property for two

parking spaces. Over Nemer's objection, the trial court then discharged the writ.

Nemer now appeals the order discharging the writ, arguing the trial court erred by deeming the City's return to the writ sufficient. The only proper remedy, he contends, was to void the homeowners' certificate of occupancy. We affirm in full.

BACKGROUND[1]

As described in *Nemer III*, "Nemer sued the City of Mill Valley and the Mill Valley City Council (collectively, the 'City') and his neighbors personally, the Geiszlers. Against the City, he alleged four causes of action: two seeking a writ of mandate (the first and second causes of action), a third cause of action alleging the violation of procedural due process, and a fifth cause of action for declaratory relief alleging the existence of a dispute as to whether the Geiszlers' remodel project exceeds the scope of their City approvals and violates the Mill Valley Municipal Code and whether the City has discretion to refrain from enforcing the local code. [(See *Nemer I*, *supra*, A157210.)] He alleged the declaratory relief cause of action against the Geiszlers as well, and also a fourth cause of action brought under Government Code section 36900, which creates a private right of action for violations of local ordinances. (Gov. Code, § 36900, subd. (a) ['The violation of a city ordinance

---

[1] Our discussion is based in part on portions of the appellate record in *Nemer III*, *supra*, No. A166234. Nemer objects that the City has cited portions of that prior record without having validly incorporated it into the appellate appendix which is accurate. (See generally Cal. Rules of Court, rule 8.124(b)(2).) But we take judicial notice of the record in that prior appeal. (See, e.g., *People v. Kisling* (2014) 223 Cal.App.4th 544, 546, fn. 2; *Eden Township Healthcare Dist. v. Eden Medical Center* (2013) 220 Cal.App.4th 418, 421, fn. 2.)

may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action'].)

"The trial court granted summary judgment in favor of the City, and we reversed. [(*Nemer I*, *supra*, A157210.)] We did not address the merits of Nemer's allegations about work done without required permits or in violation of local law; those issues were not before us. We held that, under the Mill Valley Municipal Code, the City has a mandatory duty to void the certificate of occupancy it issued to the Geiszlers if Nemer proved his allegations that the construction violated the Code or the terms and conditions of the permits. [(*Nemer I*, *supra,* A157210.)] We also held that the City did not prove as a matter of law that Nemer could not prevail on his claim the City violated state and local law by failing to hold a publicly noticed hearing about those aspects of construction that Nemer alleges require a variance. [(*Ibid*.)] We did, however, affirm the trial court's rejection of Nemer's constitutional claims because we were 'unable to discern an intelligible legal argument for reversal' by Nemer. [(*Ibid*.)"] (*Nemer III*, *supra*, No. A166234.)

Our express holding that the City can be compelled by writ of mandate to revoke, as null and void, a certificate of occupancy that it issued for construction that violates local law was based in large part on a provision of the Mill Valley Municipal Code that declares a certificate of occupancy issued in such circumstances to be "void." [(*Nemer I*, *supra,* A157210.)] That provision is section 20.04.042 which states that " '[n]o . . . Certificate of Occupancy shall be issued . . . contrary to the provisions of this Title' " and that " '[a]ny . . . Certificate of Occupancy issued contrary to the provisions of this Title shall be *null and void*.' " [(*Nemer I*, *supra,* A157210.)]

"Following a bench trial on remand, the trial court issued a comprehensive 43-page statement of decision ruling against Nemer on almost

every issue. The court concluded the Geiszlers' remodel project did not violate any approvals or the Mill Valley Municipal Code other than in one respect: it lacked three on-site parking spaces as required for single family dwellings under the Mill Valley Municipal Code." (*Nemer III*, *supra*, No. A166234.)

In relevant part, the court's statement of decision on this issue states: "Nemer argues that under the MVMC, the Geiszlers' property was required to have three parking spaces—two regular spaces and one guest parking space—and it no longer complies with the Code because part of the parking spaces after construction are on City property. Section 20.60.090 I5 provides that single family dwellings must have '2 spaces plus 1 space for guest parking when on-street parking is not available along the immediate frontage of the property, and 1 space for each roomer. One of these may be of compact car size.' A 'parking space' is defined in Section 20.08.158 as 'a space of at least nine by 20 feet located entirely off the street right-of-way and on the lot where the building or use which it serves is located.'

" . . . Nemer Testimony Items 22 and 23 contain admissible statements that Nemer observed that the Geiszlers converted the garage to the family room, laundry room and workshop and that there are no parking spaces 9 by 20 or 8 by 17. In Exhibit 20, Newman testified that one of the parking spaces is a little bit off the property and that the Department of Public Works has the discretion to make accommodations if a parking spot is in a public right of way.[2] In Exhibit 26, Kelly testified that the guest parking spot did not

---

[2] At trial, Nemer introduced portions of deposition testimony from Lisa Newman in which he elicited her acknowledgment that one of the parking spaces depicted on a proposed site plan was not entirely on the property and

a guest spot was not "strictly speaking" compliant with the code either, and then the following testimony:

"Q. . . . [I]f . . . the Geiszlers decided to make the guest parking space the main parking space, the second parking space, would that be a Code-compliant parking space? [¶] . . . [¶]

"THE WITNESS: That's up to the Planning Commission and the Public Works Department.

"MR. NEMER: Q. All right. So what's the role of the Public Works Department?

"A. To evaluate . . . anything that encroaches into the public right-of-way. [¶] . . . .[¶]

"Q. And the Department of Public Works has some authority over the public, or the public right of way?

"A. They do.

"Q. And do you understand what that authority is?

"A. Yes. It's to maintain sufficient area for circulation, emergency access.

"Q. Okay. And so then, when a parking space encroaches into the public right of way, they are authorized to make accommodations?

"A. Yes. They have discretion about whether or not that's permissible. [¶] . . . [¶]

"Q. Have you heard of an 'Encroachment Permit'?

"A. Oh, absolutely. Yeah, that's the regulatory mechanism.

"Q. Okay. And what is an Encroachment Permit?

"A. It's a ministerial permit, so it's administered by the Department.

"Q. And it's a physical piece of paper with words on it?

"A. Yes.

"Q. And it will describe the area of the encroachment?

"A. Yes.

"Q. And it will authorize continued use of that encroachment?

"A. Yes."

appear to be entirely on the lot. In Exhibit 30, Poster testified that parking on city property is allowed unless prohibited but if someone wanted exclusive use of a guest spot on city property, it would typically require an encroachment permit.[3]

"The City and the Geiszlers do not dispute that the parking spaces are not entirely on the Geiszlers' property. . . . [¶] Accordingly, on this limited narrow issue the Court issues a writ of mandate under Section 1085 and/or 1094.5 directing the City to comply with Section 20.104.042, which addresses permits issued contrary to law. Although the Geiszlers contend their certificate of occupancy cannot be revoked because they relied in good faith on the City's approvals, the authority they cite is inapposite . . . . Here, it is not

---

[3] At trial, Nemer introduced portions of the deposition of Andrew Poster (identified as Exhibit 30) in which he elicited the following testimony:

"Q. If an applicant wanted to have exclusive use of that guest parking spot, what would they have to do?

"A. Now, that would typically require some sort of encroachment process.

"Q. Okay. [¶] And what is the encroachment process?

"A. The encroachment process would be they would apply for an encroachment permit stating what, where—a diagram, and that would need to be approved by the Department of Public Works.

"Q. And what are the criteria that the Department of Public Works would use to decide whether or not to grant that application for a permit?

"A. Whether or not . . . the public is using it now, intending to use it, or there is a realistic foreseeable use—public use of that land." He characterized this testimony in his trial brief with the parenthetical statement, "parking would require encroachment permit."

As Nemer points out, the trial court said in its statement of decision that this evidence (i.e., Exhibit 30) is inadmissible. Yet it then went on to cite that testimony in its statement of decision anyway.

the City which seeks to revoke any approvals or the certificates of occupancy, but rather the Geiszlers' neighbor by way of writ of mandate. The Court of Appeal already has ruled that writ relief may be available to Nemer to challenge alleged illegal work and to seek revocation of a certificate of occupancy."

The trial court continued: "In their objections, the Geiszlers argue that the parking spots are lawful and not subject to challenge because the City approved the arrangement in design review and construction plans. . . . [¶] This argument is inconsistent with both the decision in *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344 and the decision of the Court of Appeal in this case. If construction is shown to be illegal, regardless of whether it was approved by the city, the certificate of occupancy can be revoked. So, for example, in *Horwitz*, *supra*, a writ of mandate was issued to revoke a building permit and certificate of occupancy issued by the city where the construction allowed under the permit violated city setback requirements. [Citation.] Here, the Geiszlers actually concede the plans show two parking spots are not entirely on their property. . . . The Court therefore overruled this objection."

It concluded: "The petition for writ of mandate under Code of Civil Procedure Section 1085 and/or 1094.5 is **granted in part and denied in part.** The evidentiary record supports a finding that the parking spots on the property of Respondents Steve and Erin Geiszler, following the construction and remodel of their residence, violate Section 20.60.090 I5 of the Mill Valley Municipal Code ('MVMC'). The petition is granted as it pertains to this violation only. Nemer has failed to submit admissible evidence supporting his other arguments and therefore the petition is denied as to the remainder of Nemer's arguments.

"As to the violation of Section 20.60.090 I5, the Court issues a limited writ directing the City of Mill Valley to comply with Section 20.04.042, which addresses permits issued contrary to law, consistent with this Order and the Court of Appeals [*sic*] decision issued on October 16, 2020. The Court retains jurisdiction over these proceedings until it determines that the City has complied with Section 20.04.042."

"On July 27, 2022, the court issued a 'limited writ of mandate' directing the City to comply with section 20.04.042 of the Code. As we previously explained, that provision 'prohibits the issuance of a certificate of occupancy for any structure that violates the Zoning Code and declares any such certificate of occupancy to be "null and void." ' [(*Nemer I*, *supra*, A157210.)]" (*Nemer III*, *supra*, A166234.)

In full, the writ of mandate states: "The petition for writ of mandate under Code of Civil Procedure Section 1085 and/or 1094.5 is granted in part and denied in part. The evidentiary record supports a finding that the parking spots on the property of Respondents Steve and Erin Geiszler, following the construction and remodel of their residence, violate Section 20.60.090 I5 of the Mill Valley Municipal Code ('MVMC'). The petition is granted as it pertains to this violation only. [¶] As to the violation of Section 20.60.090 I5, the Court issues a limited writ directing the City of Mill Valley to comply with Section 20.04.042, which addresses permits issued contrary to law, consistent with this Order and the Court of Appeals [*sic*] decision issued on October 16, 2020. The Court retains jurisdiction over these proceedings until it determines that the City has complied with Section 20.04.042."

Nemer appealed the judgment issuing a limited writ of mandate, and we summarily affirmed it on the ground his briefing was unintelligible. (See *Nemer III*, *supra,* A166234.)

The City filed a return to the writ. It proffered evidence that it had issued an encroachment permit to the Geiszlers to allow them to use city property in front of their home for two parking spaces, and that if some tool cabinets inside the garage are pushed back to the walls, the interior dimensions of the garage are 9 feet wide by *nearly* 20 feet long (i.e., 19 feet 8 inches), which is large enough to meet the requirement of a compact parking space under the Mill Valley Municipal Code (i.e., 8 feet by 17 feet) and nearly large enough to meet the requirement of a full size parking space under the Mill Valley Municipal Code (i.e., 9 feet by 20 feet). It asserted that this met the requirement for a full size parking space as well, because the garage is located two feet nine inches away from the property line which distance more than makes up the four-inch length differential. Accordingly, "As the Code allows for any of the three required spaces to be compact in size," it argued, "there are any number of parking permutations, given [these] dimensions, which now satisfy the City's parking requirements." Therefore, it argued, the parking arrangement was no longer " 'contrary to the provisions of [title 20]' " for purposes of section 20.40.042 and no basis to invalidate the Geiszlers' certificate of occupancy.

In response, Nemer filed a "motion to enforce court ruling and motion for order to show cause re: contempt." He sought an order requiring the Geiszlers to vacate their home and further requiring the City and them to show cause as to why they should not be held in contempt for violating the writ. He argued: (1) The certificate of occupancy is void because the Code required them to provide Code-compliant parking before the certificate of

occupancy issued; (2) legally, the parking violation could not be remedied by issuing an encroachment permit at all (which he characterized in his papers as an "easement") for two reasons: because under section 11.16.010 of the Mill Valley Municipal Code, (a) the authority to issue an encroachment permit is limited to installation or construction of garages, carports, bridges, entry walks, fences, walls or other similar improvements which this is not, and (b) issuance of an encroachment permit must be based on a showing that one is "absolutely necessary" which had not been shown. The only remedy, he argued, was to obtain a variance—which he also argued was prohibited by state law under the circumstances; (3) the encroachment permit on its face requires Pacific Gas & Electric Co.'s (PG&E) approval because PG&E has a pre-existing easement for that space yet there is no proof that PG&E has consented to the encroachment permit; and (4) issuance of an encroachment permit requires a noticed public hearing, which did not take place.

In opposing the motion, the City argued that Nemer's position that an encroachment permit would not suffice "is directly contrary to the evidence he submitted, and upon which this Court relied in issuing the Writ." It argued that, "In finding that the parking on the Geiszlers' property violated the Code, this Court cited to evidence Nemer submitted that 'the Department of Public Works has the discretion to make accommodations if a parking spot is in a public right of way.' The Court also cited to evidence Nemer submitted that 'if someone wanted exclusive use of a guest spot on city property, it would typically require an encroachment permit.' "

The City also argued that its decision to issue an encroachment permit was authorized by section 11.16.010. According to the City, that section "authorizes the City Engineer to issue 'written permits to do any of the following acts (hereinafter sometimes referred to as 'encroachments') within,

upon or beneath the streets or other property of the City of Mill Valley: . . . (g) install or construct garages, carports, bridges, entry walks, fences, walls or other similar improvements' " and in this case, it contended, "the encroachment permit authorizes a far less obstructive use of public property than construction of garages, carports, etc."

The trial court found that the City complied with the writ and ordered it discharged.

DISCUSSION

Nemer asserts the trial court erred in discharging the writ for numerous reasons. At bottom, he contends that the trial court was bound by law of the case to follow our prior opinion and direct the City to void the certificate of occupancy upon finding a parking requirement violation, which is what he asserts the writ directed the City to do. He argues the City had no authority to cure the parking requirement violation by means of an encroachment permit, and that the only lawful way to excuse compliance with the Zoning Code's parking requirements was for the Geiszlers to apply for and obtain a variance. Alternatively, even if an encroachment permit were a viable option here, he contends that the encroachment permit the City issued did not actually cure the violation on the facts, and so the City's only option was indeed to revoke the certificate of occupancy.[4]

---

[4] Many such arguments are not clearly identified in an argument heading of Nemer's opening brief, as required. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 153; Cal. Rules of Court, rule 8.204(a)(1)(B).) Some are clarified in argument headings of the reply brief, however, and respondents address all of these points. In this circumstance, we exercise our discretion to consider those issues we can discern from the briefing. (See *United Grand Corp.,* at p. 153.) Any arguments not discussed in this opinion are deemed forfeited. (See *ibid.*)

The City and the Geiszlers assert numerous reasons we should affirm the order discharging the writ, ranging from the merits to invited error to lack of prejudice. Fundamentally, they also disagree with Nemer about the scope of our prior opinion and the scope of what the trial court's writ commanded the City to do.

Most of the issues briefed by the parties need not be addressed. Any error by the court in discharging the writ is not reversible if it caused no prejudice. (See Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.) Hence, if issuance of the encroachment permit validly cured the parking requirement violation, a question the parties sharply dispute, any error in discharging the writ was harmless.[5]

Simply put, resolution of this appeal—and this case—ultimately turns on whether the encroachment permit that the City issued cured the parking problem, which is the one and only violation that Nemer was ultimately able to prove at trial. As we will explain, Nemer has failed to show that it did not. Therefore, assuming without deciding it was an abuse of discretion to discharge the writ when the certificate of occupancy had not been revoked—either because such a ruling violated the terms of the writ itself and/or the law of the case—Nemer was not prejudiced and we will not reverse.

---

[5] Nemer's opening brief does not explicitly address the subject of prejudice. But his position in the opening brief is that the City did not cure the violation, which amounts to an argument that the error was indeed prejudicial. The Geiszlers raise the issue of prejudice in their respondent's brief, and Nemer argues expressly in his reply brief the error was not harmless. He argues that had the court not erred, a different result was probable because the City's return would have had to show either the provision of two off-site parking spaces or that the Geiszlers applied for and obtained a variance, or else the certificate of occupancy should have been revoked.

I.

Standard of Review

As the parties all recognize, a trial court's determination as to whether a party has complied with its writ is generally reviewed for abuse of discretion. (*Summit Media LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 182.) But " '[w]here questions of law are presented, the appellate court conducts an independent review and does not defer to the trial court's decision' " concerning writ compliance. (*Move Eden Housing v. City of Livermore* (2025) 114 Cal.App.5th 1282, 1293.)

II.

The Encroachment Permit Cured the Parking Violation.

Nemer asserts multiple reasons why the encroachment permit could not and did not cure the parking violation.

Two are purely legal. One, he contends that the local ordinance governing encroachment permits, chapter 11.16 of the Mill Valley Municipal Code, does not authorize the City to issue an encroachment permit for permanent, on-street parking for a private residence. Second, he contends that even if an encroachment permit could be issued in this circumstance, it is not a *substitute* for also obtaining a variance. Only a variance under the City's zoning code (title 20 of the Mill Valley Municipal Code), he asserts, can authorize deviations from strict application of the City's zoning requirements yet none has been obtained. Where other provisions of the Municipal Code conflict, such as title 11 governing encroachment permits, title 20 controls.

He also asserts that, factually, the parking violation has not been cured for two reasons. He asserts the encroachment permit is conditioned on PG&E's approval, there is no evidence PG&E has agreed to it and so it is not valid. He also argues that even with the encroachment permit in place, the

parking configuration still violates local law because there is not even one standard parking space on the lot (let alone three).[6]

A. Nemer Has Forfeited Several Arguments Concerning the Encroachment Permit.

Several of these arguments have been forfeited, however, and we will not consider them.

One is Nemer's argument that the return was insufficient even *with* the easement for on-street parking, given the required dimensions for parking spots. This argument, which rests on a close reading of the Mill Valley Municipal Code's parking requirements, was not raised below. But for one conclusory sentence buried on page five of his opening papers in support of his motion to enforce the trial court's writ,[7] his papers did not discuss the subject of Code-compliant parking other than to object that the Geiszlers were required to provide Code-compliant parking *before* the certificate of occupancy issued not afterwards (an argument he does not reprise on appeal). Thus, we will not consider whether the dimensions and location of the Geiszlers' parking spaces satisfy the Code's requirements even taking into account the space afforded by the easement. That issue is forfeited. (See *Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 603 [" 'issues not raised in the trial court cannot be raised for the first time on appeal' "]; *Curtis v. Superior Court* (2021) 62 Cal.App.5th 453, 474, fn. 15.)

---

[6] For the first time in his reply brief, Nemer also argues the City failed to make findings necessary to issue an encroachment permit under title 11. This issue is forfeited. " 'It is elementary that points raised for the first time in a reply brief are not considered by the court.' " (*Herrera v. Doctors Medical Center of Modesto, Inc.* (2021) 67 Cal.App.5th 538, 548.)

[7] There, without elaborating the point or citing any authority, he stated that "[t]he issuance of an 'easement' document describing parking on City property is not Code compliant parking (on the Property) . . . ."

The other argument we deem forfeited is Nemer's argument that a variance is required. That argument rests on a close reading of title 20 of the Mill Valley Municipal Code which, Nemer says, supersedes and takes precedence over any provisions in title 11, including the provisions of title 11 governing encroachment permits. Here again, Nemer did not preserve this issue for our review in contesting the sufficiency of the City's return to the writ. When he objected to the City's position it had complied with the writ by issuing the encroachment permit, he did not argue that the Zoning Code takes precedence over any other conflicting portion of the Mill Valley Municipal Code including title 11. His argument in the trial court that a variance was required to cure the parking violation was cursory and undeveloped, and he did not cite or discuss any of the provisions of title 20 of the Mill Valley Municipal Code that he now says are dispositive.[8] He thus gave the trial court no opportunity to consider this issue and offers no reason why we should consider it for the first time on appeal. (See *Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 770 [argument raised in a "cursory manner" that is "undeveloped and could easily be overlooked" held insufficient to preserve issue for appeal]; see also *S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 722 [deeming issue waived even

---

[8] Citing *no* law, he argued in his opening papers: "The issuance of the 'easement' document is also not a variance, and the Code violations are not absolved by the 'easement' document—that may only be done by a variance. The City is fully aware that an 'easement' document cannot remedy or absolve a zoning/Code violation. Absent an authorizing variance, the easement has no effect in curing the parking non-compliance found by this Court." He also argued in one sentence, "Pursuant to state law, strict compliance with zoning ordinances is required unless a variance was properly issued. Gov. Code §65906." He repeated the latter point in his reply brief, and made another, unrelated point about the City's duty to enforce its Code.

though respondent addressed it on the merits].) Because Nemer did not adequately raise this interpretation of local law in the trial court it is forfeited.

The latter issue is doubly forfeited, moreover, because it is touched on in the opening brief in a vague, passing way but only developed clearly in Nemer's reply brief. Not until his reply brief does Nemer support the point with legal argument and expressly argue for the first time that title 20, not title 11, controls here. When an appellant has presented only a conclusory argument in its opening brief "[i]t is too late" to try to salvage the issue by developing the point more fully in the reply brief, as has been done here. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 & fn. 10 (*Benach*) [more fully developed argument in reply brief disregarded]; accord, *LNSU #1, LLC v. Alta Del Mar Coastal Collection Community Assn.* (2023) 94 Cal.App.5th 1050, 1070-1071 [same]; *Bitner v. Department of Corrections & Rehabilitation* (2023) 87 Cal.App.5th 1048, 1065, fn. 3 [same]; *People v. Baugh* (2024) 107 Cal.App.5th 739, 749 [criticizing appellant for "tardily" presenting new authorities in reply brief, citing *Benach*]; *Vines v. O'Reilly Auto Enterprises, LLC* (2022) 74 Cal.App.5th 174, 190.) "An appellant may not put off to its reply brief the presentation of a legal argument supporting a claim of error asserted in its opening brief . . . ." (*LNSU #1*, at p. 1070.) "An appellant's duty attaches at the outset. It would be unfair to permit an appellant to wait to argue his substantive points until after the respondent exhausts its only opportunity to address an issue on appeal." (*Benach*, at p. 852, fn. 10.) These principles follow from the more general rule that points not raised in an opening brief are forfeited (see, e.g., *Herrera v. Doctors Medical Center of Modesto, Inc.*, *supra*, 67 Cal.App.5th at p. 548).

Accordingly, we conclude that Nemer has forfeited this issue as well.[9] Hence, for purposes of this lawsuit we will assume but not decide that an encroachment permit issued under title 11 of the Mill Valley Municipal Code can be used to cure an otherwise nonconforming parking configuration for a single-family residence without securing a variance under title 20.

The only issues Nemer raised below on the merits in contesting the sufficiency of the City's return were that the literal language of title 11 does not authorize an encroachment permit for off-street parking, and that the permit is not valid because it requires PG&E approval. Those are the only issues we will address, and we now turn to them.[10]

B. Nemer Has Failed To Demonstrate the City Lacks Discretion To Issue an Encroachment Permit for Permanent Parking under Title 11.

Section 11.16.010 of the Mill Valley Municipal Code states: "The City Engineer of the City of Mill Valley may authorize the issuance of written permits to do any of the following acts (hereinafter sometimes referred to as 'encroachments') within, upon or beneath the streets or other property of the City of Mill Valley: (a) fill, (b) excavate, (c) install utility pipes, (d) install or construct curbs and gutters, (e) install or construct sidewalks and driveways, (f) install or construct road approaches, *(g) install or construct garages, carports, bridges, entry walks, fences, walls or other similar improvements*.

---

[9] Our conclusion on this point renders it unnecessary to address the many reasons the City asserts Nemer is precluded from raising the variance issue.

[10] We have considered the City's arguments that Nemer is precluded (for many reasons) from arguing that an encroachment permit could not cure the parking violation. To the extent the City means that Nemer is precluded from asserting either of these two issues, we do not agree and will address them on the merits.

Encroachment permits for construction within the public right-of-way will only be issued when absolutely necessary and where proposed construction will not unreasonably limit existing or potential public use of the area. Only under extraordinary circumstances would fences and entrance structures located within the public right-of-way be considered absolutely necessary." (Italics added.) Nemer argues that permanent, on-street parking is none of these enumerated things, and thus the City lacked discretion to issue the encroachment permit.

Nemer does not address the standard of review that applies to this question, and argues as if we were free to interpret this provision without regard to how the City has construed its own ordinance. But the trial court, citing legal authorities (see *Symons Emergency Specialties v. City of Riverside* (2024) 99 Cal.App.5th 583, 600 (*Symons Emergency Specialties*); *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 896; *Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434), appropriately recognized that it had to defer to the City's interpretation of section 11.16.010 unless the City's interpretation was " 'arbitrary, capricious or lacks any rational basis.' "[11] Applying that standard, it then analyzed the language of

---

[11] As stated in those cases: "Under California law, 'a city's interpretation of its own ordinance is " 'entitled to deference' in our independent review of the meaning or application of the law." ' (*Harrington* [*v. City of Davis*], *supra*, 16 Cal.App.5th at p. 434; see *Berkeley Hills* [*v. Watershed Coalition v. City of Berkeley*], *supra*, 31 Cal.App.5th at p. 896 ['[A] city's interpretation of its own ordinance " 'is entitled to great weight unless it is clearly erroneous or unauthorized' " ']; [citation] [same].) As this court has repeatedly explained, where no other evidence is presented, we will defer to a city's interpretation of its own ordinance 'unless it is arbitrary, capricious or lacks any rational basis.' [Citations.] This deference is appropriate even if the language of the ordinance is susceptible to more than one reasonable

the ordinance and concluded the City's interpretation was "[a]t a minimum . . . 'reasonably debatable.' "

Nemer has not demonstrated no deference is owed to the City's interpretation and that the trial court committed legal error in so holding. As mentioned, he has not addressed the applicable standard of review at all and argues as if we are writing on a clean slate. As stated in one of the very authorities the trial court cited, appellate arguments must be tailored to the applicable standard of review, and so " '[w]hen an appellant fails to apply the appropriate standard of review, the argument lacks legal force,' and the appellant 'fails to show error in the judgment.' " (*Symons Emergency Specialties*, *supra*, 99 Cal.App.5th at p. 597.) That is true here. Thus, we need not even address Nemer's argument because it fails at the threshold.

Furthermore, giving deference to the City's construction of section 11.16.010, we agree with the trial court that the City's construction is not unreasonable. Nemer's position boils down to the contention that granting permission for on-street parking is not a "similar improvement" within the meaning of the ordinance. But a parking space *is* arguably a "similar improvement" to two other categories that are expressly enumerated in the ordinance: namely, "garages" and "carports." Unlike those examples, a parking space does not necessarily entail any *physical* improvement to the land, but it could—such as if lines were painted on the pavement and/or signs erected. In any event, the language of section 11.16.010 is not restricted to "physical" improvements. Furthermore, Nemer himself introduced evidence

---

interpretation." (*Symons Emergency Specialties*, *supra*, 99 Cal.App.5th at p. 600.)

at trial that the Department of Public works has authority to issue encroachment permits for parking. (See testimony quoted in footnotes 2 and 3, *ante,* at pp. 4-5, 6.) Nemer says now that testimony is legally incompetent, but regardless whether that is true (a question unnecessary for us to consider), the fact that he himself saw fit to proffer that testimony is a highly telling indication that the viewpoint those city employees expressed is at least *reasonable*. He even said in his trial brief that "parking would require [an] encroachment permit."

Thus, the trial court did not err in concluding that the City may grant an easement under section 11.16.010 for on-street parking.

C. Nemer Has Failed To Show the Encroachment Permit Is Not Valid Without Proof of PG&E's Approval.

This brings us to Nemer's final argument concerning the encroachment permit: he asserts no valid encroachment permit exists, because the permit issued by the City is expressly conditioned on PG&E's agreeing to it and yet there is no evidence PG&E has done so.

Here again, this argument is too undeveloped for us to consider. The encroachment permit states that it is subject to a "PERMIT CONDITION," which is that "The City of Mill Valley must have concurrence with PG&E regarding guy wire/pole clearance located in the guest parking space. Applicant must coordinate with PG&E to approve parking clearance and provide written acceptance from PG&E to the City." And we agree with Nemer that the City introduced no evidence that the Geiszlers provided written proof that PG&E has approved the parking clearance referenced in this language. But Nemer has not demonstrated that the lack of such proof defeats the effectiveness of the encroachment permit.

For one thing, there are multiple kinds of conditions. They "may be precedent, concurrent, or subsequent" (Civ. Code, § 1435; see also *id.,* §§ 1436-1438 [defining such terms]), and the validity of an instrument containing a condition that has not yet been satisfied depends on which type is involved. For example, "[a] condition subsequent is one referring to a future event, upon the happening of which the obligation of the other party *ceases*." (1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 817, p. 871, italics added.) Instruments that require third-party approval are not always ineffective unless and until the approval is given. (See, e.g., *Frankel v. Board of Dental Examiners* (1996) 46 Cal.App.4th 534, 540-541 [where settlement agreement was conditioned on approval by dentistry board, " '[t]he potential lack of approval by the Board, which would have relieved the parties of their obligations under the agreement but did not occur, is simply a 'condition subsequent' which 'is not a valid basis for concluding that the contract is not presently binding and effective' "].) Nemer has not identified which type of condition he asserts the PG&E condition is, he has discussed none of these legal principles and has supported his argument with *no* legal authority and analysis. He just assumes the PG&E language creates a condition precedent to the permit's effectiveness, yet "[c]onditions precedent are not favored in the law." (*Id.* at p. 550.)

For another thing, "[a] condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created" (Civ. Code, § 1442), and here construing the encroachment permit to be invalid unless and until PG&E gives its approval would in effect result in a forfeiture because on Nemer's theory, as reiterated with even greater clarity at oral argument, the consequence would be to revoke the certificate of occupancy and force the Geiszlers from their home. Nemer's position takes no account

of this interpretive principle. " ' "The burden is upon the party claiming the forfeiture to show that such was the unmistakable intention of the instrument. If the agreement can be reasonably interpreted so as to avoid the forfeiture, it is our duty to do so." ' " (*Ser-Bye Corp. v. C.P. & G. Markets* (1947) 78 Cal.App.2d 915, 919.) Nemer has not shown that the unmistakable intention of the City in granting the encroachment permit was to preclude the Geiszlers from living in their home unless and until they provide proof that PG&E has approved the guest parking encroachment. On the contrary, the City asserts in this appeal that it granted the encroachment permit as a reasonable method of rectifying the parking violation found by the trial court and that the lack of proof of PG&E approval should *not* result in the loss of the Geiszlers' right of occupancy.

As we previously explained when we summarily rejected Nemer's appeal from the trial court's judgment following the bench trial, an appellant has the burden of demonstrating error by means of a developed argument that is supported by legal analysis and legal authority. (See *Nemer III*, *supra*, A166234.) We cannot act as Nemer's advocate by supplying a legal argument on his behalf. (*Ibid.*) On this issue, there is none. Thus, Nemer has failed to persuade us the trial court erred in concluding that issuance of the encroachment permit cured the parking violation.

CONCLUSION

Because we have concluded the parking violation was cured, any error in discharging the writ was harmless.

DISPOSITION

The order discharging the writ is affirmed. Respondents shall recover their costs.

STEWART, P. J.

I concur.

MILLER, J.

Nemer v. City of Mill Valley et al. (A170724)

Nemer v. City of Mill Valley et al.
A170724

RICHMAN, J., Concurring.

Disputes between neighbors can be among the most prolonged, petty, and downright nasty of all litigation. (See, e.g., *Griffin v. Northridge* (1944) 67 Cal.App.2d 69, 71–73.) A fortiori for the Geiszlers, when your neighbor is a California attorney with over 53 years experience who has apparently devoted the last 10 years to tormenting them—not to mention making them incur significant attorney fees while he proceeds pro se.

I write separately, however in hindsight, to express regret that the system did not do more to have ended Nemer's vendetta earlier.

As noted, this is Nemer's fourth appeal. In the first appeal, *Nemer I*, we went out of our way to reverse in small part a summary judgment against Nemer (based on the strict standard of review governing such judgments), but we rejected most of his appeal because we were "unable to discern . . . intelligible legal argument." (*Nemer v. City of Mill Valley* (A157210, Oct. 16, 2020 [nonpub. opn.] (*Nemer I*).) Then, in *Nemer III*, we summarily affirmed on the ground Nemer "failed to present any coherent, intelligible legal argument for reversal supported by relevant legal authority and an appropriate discussion of the material portions of the record." (*Nemer v. City of Mill Valley* (A166234, Dec. 22, 2023) [nonpub. opn.] (*Nemer III*).) Regrettably, we did nothing to address on our own the issue of sanctions.

Apparently recognizing the inadequacy of his earlier briefing, Nemer had an of counsel attorney in his firm appear as his co-counsel and write the brief in this appeal, though Nemer himself argued it. And quite an argument it was. It began with Nemer telling us that his argument was in the brief

and reserving all his time for rebuttal. When that rebuttal came, Nemer was questioned about the setting here and how the Geiszlers' parking situation in any way adversely affected him. He offered nothing significant in response. Nemer was then asked about his appeal in *Nemer III*, and his view as to its significance, and he responded that he thought the Geiszlers would appeal so he appealed first and "phoned it in." What audacity!

Nemer has caused the Geiszlers enough grief and expense. And he has consumed more than his fair share of the City's resources. Finally, however belatedly, it is at an end.

RICHMAN, J.

Nemer v. City of Mill Valley et al. (A170724)