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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JIMMY K. LEE, Plaintiff and Appellant, v. JOSE SEGURA et al., Defendants and Respondents.	H052673 (Santa Clara County Super. Ct. No. 23CV418260)

In May 2023, City of San José (City) housing inspector José Segura inspected a property owned by Jimmy K. Lee and identified numerous housing and building code violations. Although Lee had until August to correct the violations, and no compliance order had yet been issued, in July 2023 Lee sued Segura and the City. He claimed that Segura had failed to provide a fair appeal process and falsely accused him of performing work on a balcony without a permit. Segura later moved for summary judgment, arguing, among other things, that Lee had not exhausted administrative remedies, which Lee was then still pursuing. Agreeing, the trial court granted Segura's motion. As explained below, we likewise agree Lee's failure to exhaust administrative remedies bars his claims and therefore affirm the judgment in favor of Segura.

I. BACKGROUND

A. The Inspection and Subsequent Administrative Proceedings

In March 2023, Segura notified Lee that his property would be inspected as part of a neighborhood improvement project designed to assist owners in recognizing and correcting housing and property blight issues.

Two months later, in May 2023, Segura inspected Lee's property. Segura identified 40 municipal code violations in the exterior of the property and the interior of four units, and he issued an inspection notice, which was subsequently amended, requiring Lee to correct the violations by early August. One of the violations identified was the failure to obtain permits to repair or replace a balcony. A compliance inspection was scheduled for August 7, 2023.

Because the inspection notice did not contain any information concerning an appeal, Lee worried that he would not be able to appeal Segura's findings, and in late June 2023 Lee contacted Segura to demand an appeal. Segura responded that "the inspection notice is not a citation" and that a hearing would be needed only if a compliance order was issued and Lee failed to satisfy it.

In August 2023, Segura conducted the scheduled compliance inspection and determined that several of the previously identified violations still existed. Accordingly, on August 11, 2023, Segura issued a compliance order and accompanying notice of the order informing Lee that he needed to comply with the order by September 22, 2023 to avoid penalties. The notice also informed Lee that, by submitting a written request within 14 days, he could request a hearing to dispute the compliance order.

On August 28, 2023, Lee requested a hearing to dispute the compliance order. A hearing was held in October 2023, and in December 2023, a decision was issued affirming Segura's findings and requiring Lee to correct the violations identified in the order within 120 days of the decision. The decision also instructed Segura that he could appeal by filing a request with the Appeals Hearing Board within 10 days.

In November 2023, Lee requested an appeal from the decision. As of May 2024, no hearing date on that appeal had been set.

B. Lee's Complaint

Lee commenced this suit on July 3, 2023, after the notice of inspection but before the compliance order (as well as before the hearing concerning his objections and the appeal to the Appeals Hearing Board concerning that order). He filed a petition for a writ of mandate under "CCP § 1085." Although the petition named both Segura and the City as respondents, the two causes of action in the petition were both "[a]gainst José Segura" alone. (Boldface omitted.) Lee described his first cause of action as for failure to provide a fair appeal process and alleged that he "demanded a fair appeal hearing from Segura and Segura has not provided any." Lee described his second cause of action as for a false claim of balcony work without a permit, and he alleged in it that "Segura falsely accused me of having worked on my balcony without permit and demanded me to obtain a permit for my balcony repair and to open it up for inspection, based on the only ground that a post at the end of the balcony deteriorated due to exposure to rainfall."

C. Summary Judgment

In May 2024, Segura moved for summary judgment. Segura argued that both of Lee's claims were barred because the City had provided a fair appeal process, and Lee had failed to exhaust that process. Segura also sought summary judgment on alternative grounds. For example, Segura argued that, because he cannot provide an appeal process, Lee's claim against him for not providing such a process fails. Segura also argued that, in claiming that he was falsely accused of working on a balcony without a permit, Lee failed to state a valid claim under *Monell v. Department of Social Services* (1978) 436 U.S. 658 because he did not allege that any city policy violated his constitutional rights. Finally, Segura argued that Lee's claims challenged adjudicative rather than legislative actions and therefore Lee should have petitioned for administrate mandate under Code of

Civil Procedure section 1094.5 rather than ordinary mandate under Code of Civil Procedure section 1085.

The trial court granted Segura summary judgment on largely, but not entirely, the grounds urged. The court held that, because "there has been no final decision on the appeal of the Director's decision," Lee had failed to exhaust administrative remedies, which barred his claim for not supplying a fair appeals process. The trial court also ruled in the alternative that Segura was not the proper party to sue on this claim because "responsibility for supplying the administrative remedy belongs to the City" rather than inspectors such as Segura. Finally, although the court noted that Lee's claim concerning the balcony permit "may also be subject to the defense of failure to exhaust administrative remedies," it ruled that Segura was entitled to judgment on the claim because administrative, rather than ordinary, mandate was the proper remedy for Segura's allegedly false accusations concerning the balcony permit.

The trial court subsequently entered final judgment for Segura. In the final judgment, the court also dismissed the City because it had neither been properly served nor appeared in the matter. Lee filed a timely notice of appeal.

II. DISCUSSION

Lee challenges the trial court's grant of summary judgment against him on multiple grounds. He contends that he should have been permitted to appeal as soon as he received an inspection notice and was not required to wait until he received a compliance order and exhausted the remedies for challenging that order. Lee makes a number of other arguments as well: Segura and the City unlawfully searched his property without a warrant; his separate statement of material facts was not defective; his petition was appropriately brought for traditional, rather than administrative, mandate; and he properly sued Segura for denying him a fair appeal. We need only address whether Lee failed to exhaust administrative remedies. As explained below, reviewing the trial court's summary judgment order de novo (see e.g., *Hobbs v. City of Pacific Grove* (2022) 85

Cal.App.5th 311, 321), we conclude that Lee did not and that both his claims should be dismissed as a result.

The exhaustion of remedies rule is based on two considerations: " 'administrative autonomy (i.e., courts should not interfere with an agency determination until the agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary).' " (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080.) Under the rule, if a statute, regulation, or ordinance provides a remedy before an administrative agency, a party must exhaust that remedy before seeking judicial review. (*Parthemore v. Col* (2013) 221 Cal.App.4th 1372, 1379.) Indeed, "[e]xhaustion of administrative remedies is 'a jurisdictional prerequisite to resort to the courts.' " (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70, italics omitted.) Moreover, the exhaustion requirement applies to writ actions (*Eight Unnamed Physicians v. Medical Executive Com.* (2007) 150 Cal.App.4th 503, 511) and to constitutional challenges (*Service Employees Internat. Union, Local 1000 v. Department of Personnel Admin.* (2006) 142 Cal.App.4th 866, 871 (*Service Employees*); *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486 (*Bockover*).)

Lee failed to exhaust administrative remedies. Under the San José Municipal Code, when a compliance order is issued, the person subject to the order may dispute it by requesting a hearing before the "director," the head of the department responsible for enforcing the allegedly violated provisions of the code, within 14 days after delivery of the order. (San José Mun. Code, § 1.14.045(A) [authorizing request for a director's hearing]; see also *id*., § 1.14.020 [defining "director"].) If dissatisfied with the director's decision, a person may appeal by requesting within 10 days a hearing with the Appeals Hearing Board. (*Id*., § 1.14.048(C).) If the Appeals Hearing Board finds that an uncorrected code violation occurred, it issues an administrative order (*id*., § 1.14.080),

and a person aggrieved by the order may petition the superior court for a writ of mandate. (*Id*., § 1.14.120.)

Lee failed to exhaust these administrative remedies. Indeed, he filed suit on July 3, 2023, a little less than two months after he received the initial inspection notice, and a full month *before* the compliance order was issued on August 11, 2023. Afterwards, in late August, Lee requested a director's hearing, and in November 2023, after the director held a hearing and issued an adverse decision, Lee appealed that decision to the Appeals Hearing Board. However, by May 2024 when Segura moved for summary judgment, far from issuing an administrative order, the Board had not even set a hearing date. Consequently, the City had not issued a final decision, Lee had not exhausted his administrative remedies, and his claims were not ripe for judicial review. (*AIDS Healthcare Foundation v. State Dept. of Health Care Services* (2015) 241 Cal.App.4th 1327, 1338 [" 'Until a public agency makes a final decision, the matter is not ripe for judicial review.' "].)

Lee does not dispute that he failed to exhaust the administrative remedies available under the San José Municipal Code. Instead, he argues that he was not required to pursue those remedies, which were for the compliance order, because he was entitled to appeal the notice of inspection issued prior to the compliance order. Lee asserts that "[i]t is essential for the appellate court to make a finding if appeal can take place once an Inspection Notice citing code violations and associated fine assessments have been issued, even before any follow-up Compliance Order." Without such an appeal, Lee contends, he would be "forced to fix many frivolous claims for code violations" to avoid fines for not satisfying the compliance order; "it is extremely hard to overturn an order from a city in the court using writ of mandate petitions"; and the process for appealing from administrative remedies is "unfair in that it was required to first wait for a final judgment and order." In his reply, Lee adds that the "San Jose's entire appeal process is

a hoax, with its appeal board essentially rubber-stamping code enforcement's compliance orders through complete reliance on expertise of the code enforcement officers."

These arguments are unpersuasive. To prevail on appeal, an appellant "must present meaningful legal analysis supported by citations to authority." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408; see also *Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1075 ["When an appellant . . . fails to support [a point] with reasoned argument and citations to authority, we treat the point as forfeited."].) Lee has not satisfied this requirement. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [noting that pro per parties are subject to the same procedural requirements as other litigants].) Although Lee explains why he would benefit from being able to immediately appeal notices of inspection, he fails to offer any legal principle supporting recognition of such a right. Indeed, Lee's complaint that it is unfair to be "required to first wait for a final judgment and order" contradicts a cornerstone of appellate review: the " 'one final judgment' rule," which "prohibits review of intermediate rulings by appeal until final resolution of the case." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697.) In addition, the only authority offered by Lee in support of his proposed right to appeal is a decision holding that state law required a city to provide an administrative appeal board with members independent of the enforcement agency (*Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750, 760-762)—that is, the process provided by the City's Appeals Hearing Board. Thus, Lee fails to offer any persuasive reason to recognize the right to appeal notices of inspection that he seeks.

Lee also objects that the City's administrative process does not involve a jury. However, under California law, it is well-settled that, despite the absence of a jury, an administrative agency generally "may constitutionally hold hearings, determine facts, apply the law to those facts, and order relief" (*McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 372), and Lee fails to offer meaningful legal analysis or authority suggesting that agency fact-finding is inappropriate here under California law. Lee does

cite a United States Supreme Court case, *SEC v. Jarkesy* (2024) 603 U.S. 109. However, that decision applied the Seventh Amendment (*id*. at p. 171) and, thus, as Lee recognizes, "applies only to federal cases."

In any event, because Lee did not object in the trial court that the City's administrative remedies allowed it to make factual findings without a jury, Lee has waived his jury argument and cannot assert it on appeal. (See, e.g., *Hewlett-Packard Co. v. Oracle Corp*. (2021) 65 Cal.App.5th 506, 548 [" ' "As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal . . . ." ' "].) Lee's assertion that the daily fines for code violations impose cruel and unusual punishment under the Eight Amendment similarly fails because it is unsupported by any meaningful legal analysis or authority and was not raised below.

We therefore conclude that Lee's claims against Segura are barred because Lee failed to exhaust his administrative remedies. While the trial court dismissed only Lee's first claim on this ground, Segura argued that the second claim was barred for the same reason, and Lee has offered no reason why his second claim should be treated differently under the exhaustion doctrine. Accordingly, we have authority, which we are exercising, to affirm the rejection of Lee's second claim on the alternative ground that he failed to exhaust administrative remedies. (See, e.g., *Sharufa v. Festival Fun Parks, LLC* (2020) 49 Cal.App.5th 493, 501, fn. 2.)

Because Lee failed to exhaust administrative remedies, his argument that Segura improperly inspected his property without a warrant is barred. (*Service Employees*, *supra*, 142 Cal.App.4th at p. 871; *Bockover*, *supra*, 28 Cal.App.4th at p. 486.) In addition, because the exhaustion doctrine bars Lee's claims, we need not consider whether his separate statement was defective, whether he properly petitioned for ordinary rather than administrative mandate, or whether he properly sued Segura for the alleged failure to provide a fair appeal process.

Finally, Lee argues that the trial court improperly dismissed the City as a party without giving him any opportunity to object. However, both claims asserted in the complaint were against Segura alone, and Lee's failure to exhaust administrative remedies would have applied if he had asserted those claims against the City. Finally, if the Appeals Hearing Board rules against him, Lee will be free to sue the City. As a consequence, the dismissal of the City has not prejudiced Lee, and there was no reversible error in dismissing the City.

III. DISPOSITION

The judgment is affirmed. Respondent is entitled to recover his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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BROMBERG, J.

WE CONCUR:

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GREENWOOD, P. J.

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DANNER, J.

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