SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/25/08			DEPT. 85
HONORABLE JAMES C. CHALFANT	JUDGE	A. FAJARDO	DEPUTY CLERK
HONORABLE #6	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
L. CRUZ, C.A.	Deputy Sheriff	J. CAMPBELL, CSR #11859	Reporter

9:30 am	BS110241 WEST WASHINGTON PROPERTIES LLC VS CALIFORNIA DEPARTMENT OF TRANSPORTATION	Plaintiff Counsel	GERALD M. MURPHY	[X]
		Defendant Counsel	O.J. SOLANDER	[X]

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE

The matter is called for hearing.

Counsel read the Court's tentative ruling.

After argument of Counsel, the Court rules in accordance with it's tentative which is modified, adopted and filed as the final ruling of the Court.

The Hearing on Petition for Writ of Mandate is denied.

This matter is hereby sent to Department 1 to be reassigned to a Trial Court for all further proceedings.

The Administrative Record, consisting of three(3) volumes, is ordered returned to Counsel for the Petitioner to be retained in the same manner pending any further proceedings in this matter.

Notice is waived.

MINUTES ENTERED
04/25/08
COUNTY CLERK

West Washington Properteis, LLC v. California Department of Transportation
BS 110241

Tentative decision on petition for writ of mandate: denied

Petitioner West Washington Properties, LLC ("Petitioner") seeks a writ of administrative mandamus to overturn the decision of Respondent California Department of Transportation's ("Respondent" or "Caltrans") to enforce a November 16, 2006 Notice of Violation, which ordered the removal or reduction in size of Petitioner's outdoor advertising. The court has read and considered the moving papers,[1] opposition and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner commenced this proceeding on August 1, 2007. Petitioner contends that Respondent Caltrans abused its discretion in rejecting its claim of estoppel as against Respondent's Notice of Violation and order to remove or reduce the size of Petitioner's outdoor advertising.

B. Applicable Law

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceed without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

In this case, which concerns solely whether Caltrans proceeded in a manner required by law in concluding that defenses of equitable estoppel and laches are not available to its enforcement proceeding, are reviewed *de novo*.

C. Statement of Facts

Petitioner is the owner of a building located at 155 West Washington Boulevard in Los Angeles ("the Property"). This is Petitioner's only asset. AR 641. There is a 8000 square foot "Wallscape" situated on the Property, which was first installed in connection with the 1984 Olympics and has been in existence ever since (the "Wallscape"). AR 641. The Wallscape has been leased to Clear Channel for advertising and depicts graphic images and text viewable from the I-10 freeway, including by Caltrans inspectors. AR 641, 172-73. The City of Los Angeles has issued permits for the Wallscape since its first use. AR 600, 602, 618. In 1991, the City conducted an investigation to determine whether the Wallscape is a hazard for motorists, and concluded that the Wallscape may constitute a distraction for motorists but there was insufficient date to substantiate that conclusion.. AR 589.

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[1]Petitioner's brief is 19 pages long in violation of CRC 3.1113(d). The court has exercised its discretion to consider only the first 15 pages.

Petitioner acquired the Property in 1999. AR 641. At the time Petitioner purchased the Property, it believed the Wallscape was legal. AR 139. The revenue stream from the Wallscape was a significant part of the value acquired and contributed substantially to the price Petitioner paid for the Property, and Petitioner would not have purchased the Property without the revenue stream from the Wallscape. AR 139-41. Petitioner believed that the Wallscape was exempt from Caltrans regulation based on its 15 years of existence without citation. AR 165-66.

The Wallscape is subject to the jurisdiction of the Outdoor Advertising Act (B&P §5350, 5408, enacted in 1933 and amended in 1967) (the "Act").[2] AR 10-11, 26. In March 2006, Caltrans determined that it violated the Act because it is too large, approximately 8,000 square feet in size, and is placed without any permit in violation of section 5350 of the Act. The subject display with out a permit is a public nuisance as a matter of law. The People ex rel. Department of Transportation v. Outdoor Media Group, ("Outdoor Media") (1993) 13 Cal.App.4th 1067, 1076. Caltrans had not previously cited the Wallscape because the agency viewed wallscapes put up for the Olympics as temporary and neither the City nor the public had complained about this particular one. AR 188.

Petitioner was given Notice of Violation 07-0093 which was later amended. ("NOV"). AR 165, 368, 633. Petitioner agreed to reduce the size of the Wallscape from 8,000 to 1200 square feet to comply with Caltrans' NOV while pursuing its remedies hoth administratively and in court. AR 148, 165.

A hearing was held before the Office of Administrative Hearings, Administrative Law Judge Daniel Juarez (the "ALJ"), on January 30, 2007. The ALJ's proposed decision dated February 26, 2007 stated that while the Wallscape violated the Act, the doctrines of equitable estoppel and laches prevented Caltrans from enforcing it. AR 649m 651. In so doing, he distinguished the cases relied on by Caltrans, Outdoor Media, 13 Cal.App.4th at 1067 and The People ex rel. Department of Public Works v. Ryan Outdoor Advertising, Inc., (1974) 39 Cal.App.3d 804. AR 647-48. Caltrans served a Notice of Partial Nonadoption of Proposed Decision on April 5, 2007, rejecting the proposed decision on the issues of equitable estoppel and laches. After opposition by Petitioner, Caltrans issued its final decision dated June 26, 2007, determining that equitable estoppel and laches cannot apply to a nuisance *per se*. AR 92.

D. Analysis

The relevant facts are not in dispute, and Petitioner does not contend that the decision's factual findings are not supported by the record. Therefore, the Wallscape owned by Petitioner violates the Act. AR 26-27. The issue presented is narrow: whether Caltrans by equitable estoppel or laches should be prevented from enforcing its Decision to enforce its November 17, 2006 ordering Petitioner to remove or reduce the size of the Wallscape. The issue is purely legal, and Caltrans' legal conclusions are subject to *de novo* review.

1. Timeliness

As a preliminary matter, Caltrans' contend that the Petition, filed August 1, 2007, is time-

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[2]Section 5350 prohibits the placement of affected advertising displays without a permit. Section 5408(a) prohibits, inter alia, advertising displays that exceed 1,200 square feet.

barred by CCP §1094.8(a). It points out that the Wallscape is a billboard entitled to First Amendment protection. Metromedia, Inc. v. City of San Diego, (1981) 453 U.S. 490. A petition for mandamus review of state agency decision normally must be filed within 30 days of the decision (Gov. Code §11523), but review of "the issuance, revocation, suspension, or denial of a permit or other entitlement for expressive conduct protected by the First Amendment" must be sought within 21 calendar days of the agency's decision. CCP §1094.8. Since Caltrans mailed its decision on July 1, 2007, the August 1, 2007 Petition was untimely under section 1094.8.

Although the content of the Wallscape is entitled to protection, this case does not concern a permit or entitlement for expressive conduct. It doesn't even concern issuance of a permit. It concerns an enforcement proceeding against the Wallscape itself for, in part, the lack of a permit. As Petitioner argues (Reply at 1), this proceeding is a land use challenge to which the First Amendment does not apply. As a result, section 1094.8 does not apply. The Petition was timely filed.

2. Application of Equitable Defenses

Equitable estoppel applies in circumstances where a party has induced another into forbearing to act. Lantzy v. Centex Homes, (2003) 31 Cal..App.4th 363, 383. The elements of estoppel are: (1) the party to be estopped must be appraised of the facts; (2) he must intend that his conduct shall be acted upon; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. Driscoll v. City of Los Angeles (1967) 67 Cal.2d 297, 305. The doctrine applies to a public entity in the same manner as a private party when the elements of equitable estoppel have been shown, and when the injustice which would result from a failure to estop the agency is sufficient to justify any adverse effect upon public interest or policy which would result. City of Long Beach v. Mansell, (1970) 3 Cal.3d 462, 496-97.

Laches, too, is an equitable defense. If the agency has delayed an unreasonably long time before seeking enforcement, the doctrine of laches may apply. It requires a showing of both unreasonable delay by the agency and prejudice to the party. Lam v. Bureau of Sec. & Investigative Services, (1995) 34 Cal.App.4th 29; City and County of San Francisco v. Pacello, (1978) 85 Cal.App.3d 637, 644. Laches will not ordinarily be invoked to defeat a policy adopted for the public protection. Id. at 644. The courts require a weighing process to ascertain whether the injustice to be avoided is sufficient to counterbalance the effect of the defense upon a public interest. Id.

Caltrans does not dispute the factual findings supporting the ALJ's decision regarding equitable estoppel and laches.[3] Instead, its decision below, and its argument herein, is that those equitable defenses do not apply.

The decision in Outdoor Media, 13 Cal.App.4th at 1067 is controlling, albeit arising in a different procedural setting. There, the defendant applied for permits for two billboards. Caltrans refused to issue the permits, and commenced an action for injunctive relief to compel removal of the billboards when the defendant built them anyway. The court held, *inter alia*, that the defendant's cross-complaint for estoppel failed to state a claim. The Act defines a violation

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[3]It is not at all clear that Caltrans has committed any affirmative act supporting the elements of equitable estoppel, but the elements of laches have been met.

as a public nuisance, and a legislatively declared public nuisance is a nuisance *per se* against which an injunction may issue. The function of courts in such circumstances is limited to determining whether a statutory violation exists, and whether the statute is constitutionally valid. 13 Cal.App.4th at 1076. Since equitable defenses such as equitable estoppel may not be invoked against a governmental body where it would defeat the operation of a policy adopted to protect the public. Therefore, the defense of equitable estoppel did not apply. 13 Cal.App.4th at 1078.

The court is bound by Outdoor Media. Auto Equity Sales, Inc. v. Superior Court, (1962) 57 Cal.2d 450, 455. Of course, an appellate decision is only as good as the facts on which it is based, and both the ALJ and Petitioner attempted to distinguish Outdoor Media based on its facts. Specifically, the ALJ noted that, unlike Petitioner, the defendant in Outdoor Media deliberately built the billboards knowing that a permit had been denied. AR 647. He also noted that the appellate court mentioned that "in some ...situations where justice may require it," a governmental body may be bound by estoppel. From this, the ALJ concluded that estoppel can be invoked against Caltrans. AR 648.

The ALJ was wrong. The factual distinction is irrelevant to the holding of Outdoor Media, which is, in part, that equitable defenses do not apply to enforcement of violations of the Act, which the Legislature has defined as nuisances *per se*.

The ALJ also wrongly stated that Outdoor Media cited County of San Diego v. Cal. Water etc. Co., 30 Cal.2d 817, 826, which "conceded" that estoppel could be invoked against a governmental body in appropriate cases. Outdoor Media does not cite Cal Water. Moreover, the mere fact that equitable estoppel can apply to a public agency in appropriate cases does not mean that it applies here where the Legislature has made a determination of nuisance *per se* which obviates any need to balance public interest versus private harm.

People ex. rel. Dept. of Transportation v. Ryan Outdoor Advertising, Inc., (1974) 39 Cal.App.3d 804, at 813, is in accord. In that case, Ryan had maintained two billboards since 1949. The state began widening a highway where the billboards were located, and Ryan was directed to move his billboards 20-45 feet laterally on the same property, which he did. He received permits for the new structures. In 1969, pursuant to new guidelines, the state determined that the movement of the billboards was a "placing" under the Act, and the billboards were in a nonconforming location within 660 feet of the right-of-way, they were in violation of section 5405(a), and ordered their removal. The court held that, although the movement of the billboards at the state's direction was involuntary, that did not affect analysis of whether they violated the Act and were subject to removal. As a matter of law, similar to zoning, application of equitable principles to permit the billboards to remain would be an unwarranted expansion of non-conforming use doctrine. Therefore, the billboards were subject to removal and equitable defenses did not apply. 39 Cal.App.3d at 813. On the other hand, equitable estoppel could support a claim for damages because there is no public policy against requiring the state to pay compensation in an inverse condemnation action. Id. at 814.

In short, equitable defenses simply are not in play when it comes to advertising displays that violate the Act because they are *per se* nuisances. The Legislature has performed the

balancing of public policy and private interests and the court may not question this balance.[4]

As Petitioner's Wallscape admittedly violates the Act, it is a nuisance *per se* and equitable defenses do not apply. Caltrans did not abuse its discretion in ordering Petitioner to remove or reduce the size of the Wallscape.

Accordingly, the Petition must be denied Caltrans is ordered to prepare a proposed judgment, serve it on the Petitioner for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for May 23, 2008.

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[4]The court expresses no view as to the merits of Petitioner's section 1983 claim. The case will be reassigned to an independent calendar department for resolution of the claim for damages.